

# Connecticut Judicial Branch Criminal Jury Instructions

This collection of jury instructions was compiled by the Criminal Jury Instruction Committee and is intended as a guide for judges and attorneys in constructing charges and requests to charge. The use of these instructions is entirely discretionary and their publication by the Judicial Branch is not a guarantee of their legal sufficiency.

## COMMITTEE MEMBERS

Hon. Robert J. Devlin, Jr., Chairperson

Hon. Joan K. Alexander

Hon. John F. Blawie

Hon. Jon C. Blue

Hon. Frank M. D'Addabbo, Jr.

Hon. Roland D. Fasano

Hon. Robin Pavia

Hon. Hope C. Seeley

Hon. Elpedio N. Vitale

Hon. Gary J. White

# ABOUT THESE INSTRUCTIONS

This collection of jury instructions was compiled by the Criminal Jury Instruction Committee and is intended as a guide for judges and attorneys in constructing charges and requests to charge and as a general reference to criminal offenses and their elements. The use of these instructions is entirely discretionary and their publication by the Judicial Branch is not a guarantee of their legal sufficiency.

The collection includes instructions for most of the Penal Code (a handful of minor offenses were not included), many of the offenses in Chapter 53, the most commonly occurring drug offenses from Chapter 21a and weapons offenses from Chapter 29, and the most commonly occurring motor vehicle offenses for which a jury trial is available from Chapter 14. It is organized into 10 parts: Preliminary Instructions, General Instructions, and 8 broad categories of crime. These categories do not necessarily correspond to the organization of the General Statutes. To find an instruction by the statute number, see the Index by Statute.

There is not necessarily a single instruction for each statute. If a statute provides discrete alternative ways of committing an offense, there are separate instructions. Similarly, multiple statutes defining similar offenses, most often different degrees of the same offense, have been combined into a single instruction when the only distinguishing factor is a single element.

Each instruction for an offense begins with the statutory definition of the crime. The statutory language has been altered for gender neutrality and the use of the term "victim" has been replaced with "decedent" or "complainant." The Committee concluded that reading the section number of the Penal Code to jurors was unnecessary and could possibly encourage jurors to do their own legal research. Statutory references are provided in the heading, which is not part of the instruction.

Following the reading of the statute are the elements of the crime, each set off by a bold-faced heading. Any definitions relevant to the element are included. If the definition is derived from a statute or is a specialized definition derived from case law it can be found in the glossary, which provides the statutory citation and any commentary on the definition. Other definitions will have a footnote to its source. Otherwise, a word is given its ordinary meaning as found in the dictionary.

The conclusion of each instruction briefly recaps the elements and ends with a recitation of the jury's duty to find the defendant guilty or not guilty.

## ***Commentary***

Footnotes appear in the body of the instruction to reference case law discussing specific language.

The commentary for an instruction discusses relevant appellate decisions as they relate to the content of the instruction or the elements of the crime. The commentary also, when possible, references case law discussing lesser included offenses. It is in no way a comprehensive analysis of what may or may not be a lesser included offense for a given offense.

For some groups of related crimes, the commentary has been combined into a single introductory section. See, e.g., 5.1 Introduction to Murder and Manslaughter and 6.1 Introduction to Assault.

## ***Revisions***

The revision date indicates the date the Criminal Jury Instructions Committee approved the adoption or substantive revision of an instruction. When there has been a minor stylistic change or an update to the commentary, but the substantive body of the instruction remains the same, it will be indicated by a parenthetical date for modification. For example, "Revised to December 1, 2007 (modified June 15, 2008)" means that on June 15, 2008, the instruction or its commentary was modified in some minor way that did not affect the substance of the instruction.

## ***Formatting Conventions***

- Bold-faced titles and subheadings are included to make the instructions easier to read and are not part of the instruction.

- Angle brackets and italicized text are used to enclose directives to follow in customizing the charge. E.g., <*insert name of person injured*>. Angle brackets are also used to refer to other instructions that may contain some additional useful information. E.g., <*See Affirmative Defense, Instruction 2.9-1.*>.

- Parentheses are used to indicate that a choice between words or phrases is necessary. This is most commonly used for gender-specific pronouns, e.g., (he/she) or (his/her). It is also used when a statute offers several terms, not all of which may be applicable to the charged offense. If a statute has choices that are lengthy, such that stringing them together in a single parentheses would be cumbersome to read, they are separated into a bulleted list. For example,

a person is guilty of kidnapping in the first degree when (he/she) abducts another person and (his/her) intent is to compel a third person <*insert as appropriate*:>

- to pay or deliver money or property as ransom.
- to engage in particular conduct or to refrain from engaging in particular conduct.

- Square brackets are used to indicate that a portion of the instruction is optional. It will be preceded by an italicized directive defining the circumstances under which the language would be appropriate, unless it is clear from the language itself. For example,

[<*If the defendant has testified about (his/her) intent*:> In this case, the defendant has testified as to (his/her) intent. You should consider my earlier instruction on evaluating the defendant's testimony as you would any other witness.]

Note that square brackets in commentary have their common meaning, i.e., the paraphrasing of small portions of quoted material.

# RECENT CHANGES

The following change was approved by the Criminal Jury Instruction Committee on September 1, 2016:

## **7.2-1 Constancy of Accusation**

The entire instruction has been replaced in conformity with the Supreme Court's ruling in *State v. Daniel W. E.*, 322 Conn. 593 (2016).

The following changes were approved by the Criminal Jury Instruction Committee on November 17, 2015:

## **Recent Case Law**

All case law published prior to the meeting date was incorporated in the commentary where appropriate. Changes were made to the following instructions:

### **2.6-13 Other Misconduct - Criminal Sexual Behavior**

The committee thought that the phrase "any matter to which it is relevant" was too broad. It was replaced by "if it is relevant to prove that the defendant had the propensity or a tendency to engage in the type of criminal sexual behavior with which (he/she) is charged."

### **2.8-4 Defense of Premises -- § 53a-20**

In *State v. Terwilliger*, 314 Conn. 618, 661-62 (2014), the Supreme Court interpreted "crime of violence" in the context of § 53a-19 as involving "only those offenses which fall within the traditional common-law definition and do not, by their essential elements, necessarily involve the use of deadly force or infliction of great bodily harm." "Only the crimes of arson and burglary fall within that definition." *Id.*, 662. The instruction was modified to reflect this.

### **2.11-1 Possession**

In *State v. Johnson*, 316 Conn. 45 (2015), the Supreme Court criticized the existing instruction as emphasizing control over premises more than control over the contraband. The instruction has been modified to address this. All offense instructions that contain a segment on possession have also been modified to reflect these changes.

### **3.2 Attempt**

In *State v. Moreno-Hernandez*, 317 Conn. 292 (2015), the Supreme Court concluded that the attendant circumstances subdivision is not limited to impossibility situations. The instruction was modified to include a definition of "attendant circumstances" and a new commentary was added.

### **7.1-1 Sexual Assault in the First Degree -- § 53a-70 (a) (1)**

### **7.1-12 Sexual Assault in the Fourth Degree -- § 53a-73 (a) (2)**

In *Efstathiadis v. Holder*, 317 Conn. 482 (2015), the Supreme Court held that the criminal negligence standard applied to the lack of consent element in § 53a-70 (a) (1) and § 53a-73 (a) (2). An explanation of this standard was added to the instructions. Note that 7.1-11 and 7.1-12 were reorganized so that subsection (a) (2), which involves the lack of consent, is now in its own instruction (7.1-12) and all the other subsections of § 53a-73, which have to do with the status of the victim, are in 7.1-11.

## **Statutory Amendments**

Many of the statutes were amended by the General Assembly in the 2015 term. Most such changes were minor, but of particular note are:

### **2.12-1 Persistent Offenders § 53a-40, § 53a-40a, § 53a-40d and § 53a-40f**

A new category, persistent offender for possession of a controlled substance, was added.

### **5.4-1 Felony Murder -- § 53a-54c**

Home invasion was added to the list of crimes that could support a charge of felony murder.

### **8.1-7 Illegal Possession -- § 21a-279**

The statute was modified to a single offense of possession of a controlled substance with a single punishment, a class A misdemeanor, rather than distinguishing between narcotic substances, hallucinogenic substances, cannabis-type substances, and other controlled substances with different punishment schemes for each type of substance.

# **TABLE OF CONTENTS**

- Part 1: Preliminary and Trial Instructions**
- Part 2: General Instructions**
- Part 3: Vicarious Liability and Inchoate Crimes**
- Part 4: Crimes Against Administration of Government**
- Part 5: Crimes Against Life**
- Part 6: Crimes Against Security of Person**
- Part 7: Sex Crimes**
- Part 8: Crimes Against Public Health, Safety, and Welfare**
- Part 9: Crimes Against Property**
- Part 10: Criminal Writings, Financial Crimes, and Fraud**
- Glossary**
- Index by Statute**
- Archived Instructions**

# PART 1: PRELIMINARY AND TRIAL INSTRUCTIONS

## 1.1 TO THE VOIR DIRE PANEL

## 1.2 BEFORE EVIDENCE

### Introduction

Preliminary instructions serve the important function of orienting the jurors to the nature of the trial to come. It is helpful to explain at the very start the nature and scope of the jury's duty, some of the basic ground rules and the issues to be decided. Introductory remarks and instructions should be limited to basic legal principles that inform the jurors or prospective jurors of their responsibilities and obligations as jurors and that guide them in fulfilling those responsibilities and obligations. See *State v. Faust*, 237 Conn. 454, 460-61 (1996).

"A preinstruction . . . in the form of an indoctrination film, is permissible to provide preliminary instruction to prospective jurors." *State v. Beall*, 61 Conn. App. 430, 440, cert. denied, 255 Conn. 954 (2001).

The court should never provide "information to the jury regarding the consequences of a guilty verdict, or about the sentencing process." *State v. Makee R.*, 306 Conn. 371, 384 (2012).

The court is required to instruct newly selected jurors on their responsibilities to avoid publicity about the case and any communication with others concerning the facts of the case. *Kervick v. Silver Hills Hospital*, 309 Conn. 688 (2013). See Supplemental Information for Selected Jurors and Alternates, Instruction 1.1-6.

# **1.1 TO THE VOIR DIRE PANEL**

**1.1-1 Introducing the Case to the Panel**

**1.1-2 Role of the Jury**

**1.1-3 Constitutional Principles**

**1.1-4 The Voir Dire Process**

**1.1-5 Juror's Duties and Responsibilities**

**1.1-6 Supplemental Instruction for Selected  
Jurors and Alternates**

## 1.1-1 Introducing the Case to the Panel

Revised to December 1, 2007

We are here starting the trial of a criminal case. In this case the state accuses the defendant of committing *<insert number of offenses charged>* crimes; these accusations are contained in *<insert number of counts>* counts in the information, which I will now read to you.

*<Read information.>*

The information that I have read to you is not evidence; the fact that the state accuses the defendant of committing these crimes does not mean to any extent that the defendant is guilty or that the defendant has done anything wrong. The information is simply the formal means of bringing the defendant to court for trial.

The state has the burden to prove beyond a reasonable doubt every element of each crime charged.

The defendant has pleaded not guilty and elected to be tried before a jury.

The state is represented by *<insert name of prosecutor>*, who will introduce (himself/herself) and (his/her) associates in a few moments.

The defendant is represented by *<insert name of defense counsel>*, who will also introduce (himself/herself) and (his/her) associates in a few moments.

## **1.1-2 Role of the Jury**

Revised to December 1, 2007

As a juror it will be your duty to decide, based on the evidence presented here in this courtroom, whether or not the state has proved beyond a reasonable doubt the elements of each crime charged in a count.

It is your job as jurors to decide the facts. You will decide what the facts are based on the evidence presented in this courtroom; you will not make any private investigations. As a juror, you may draw any and all inferences that you find reasonable and logical from the evidence you hear. You will follow the instructions as to the law that applies in this case as I will explain it to you. You must follow the instructions as to the law, whether or not you agree with it. As jurors you must put aside your personal opinions as to what the law is or should be, and you must apply the law as I instruct. You will apply the law, as instructed, to the facts you find, based on the evidence, and in that way reach your verdict.

As to each count, your verdict will be either guilty or not guilty. Your verdict as to a count must be unanimous; all (six / twelve) jurors must agree on the verdict as to each count.

## 1.1-3 Constitutional Principles

Revised to December 1, 2007

There are a few basic principles of law that apply to all criminal cases. The first is the presumption of innocence. Every defendant in a criminal case is presumed to be innocent; this presumption of innocence remains with the defendant throughout the trial unless and until the state proves beyond a reasonable doubt the elements of the crime charged. The defendant does not have to prove that (he/she) is innocent.

The burden of proof is on the state to prove beyond a reasonable doubt the elements of a crime charged under a count before you can find the defendant guilty of that crime. In my later instructions to you I will fully explain what is meant by burden of proof and proof beyond a reasonable doubt. I will also explain the elements of each crime charged.

Every defendant in a criminal case has the right not to testify if (he/she) so chooses. This is a right guaranteed by the constitution of the United States and the constitution of Connecticut. If, in this case, the defendant does not testify, you must draw no unfavorable inferences from the defendant's failure to testify.

## 1.1-4 The Voir Dire Process

Revised to August 13, 2013

In a moment I will excuse you from the courtroom. Then each of you will be invited back into the courtroom, one by one; you will be seated in the witness box and each of the lawyers will ask you questions. If you understand the question, please answer it. If you do not understand the question, just say so and the lawyer will restate it for you. Remember, please, there are no right or wrong answers to these questions. In response to each question simply give your honest response; that is all that is needed. The purpose of this questioning process is to permit the lawyers and their clients to decide if they wish you to be a juror in this particular case.

Before I excuse you, the attorneys will introduce themselves and each of them will make brief comments to you. They will read to you a list of names of people who are in some way connected to this case, or who may come before the court as witnesses. Listen carefully to the list to see if you know any of them. If you do, do not talk to others about it, but let me know when you come back on your own.<sup>1</sup>

Jurors must be fair and impartial. If you think that you cannot be fair and impartial in this particular case for some reason, please do not tell us now, and do not share it with the other members of the panel while you are waiting to go through the questioning procedure, but do share it with us when you are brought back into this courtroom.

While you are under consideration as a juror in this case, do not discuss the case or reasons why you cannot serve with the others on the voir dire panel. There will be (six / twelve) jurors and two alternate jurors selected for this case.

---

<sup>1</sup> "A trial court may pose questions to entire venire panels prior to individual voir dire . . . and may dismiss for cause any panel member whose answers to the court's inquiries reveal bias." *State v. Faust*, 237 Conn. 454, 462 (1996). The individual panel members should not be questioned further in the presence of the panel. "A prospective juror's biased opinions or attitudes, expressed through answers to specific questions in the presence of other members of the venire panel, may taint the impartiality of the other members." *Id.*, 463.

## 1.1-5 Juror's Duties and Responsibilities

Revised to August 13, 2013

While you are under consideration as a juror in this case, you cannot discuss this case with anyone, not even other persons who have been selected as jurors. If you are selected as a juror or an alternate, you may only tell your employer and your family that you have been selected as a juror -- nothing more.

Also, you cannot conduct any private research while you are waiting to be questioned today, by using the Internet or any other means. The parties have a right to have the case decided only on evidence they know about and that has been introduced here in court. Information you may find outside the courtroom has not been tested by the oath to tell the truth and by cross-examination and may be unreliable.

Also, if there is anything regarding this case on radio or television or in the newspaper, you cannot listen to it, watch it or read it. If you do come across any reports in the newspaper or a magazine, on TV, or any Internet site or "blog," you may not read or watch them because they may refer to information not introduced here in court or they may contain inaccurate information.

You may not communicate to anyone any information about the case. This includes communication by any means, such as text messages, email, Internet chat rooms, blogs, and social websites like Facebook, MySpace, YouTube, or Twitter.

Participating in a criminal case as a juror is an important duty. We will attempt to keep any inconvenience for you to a minimum.

*<Explain briefly the anticipated schedule of the trial.>*

*<Excuse the panel.>*

## 1.1-6 Supplemental Instruction for Selected Jurors and Alternates

Revised to November 6, 2014

Now that you have been selected to serve in this criminal trial you will be obligated by your oath to follow the rules of juror conduct until you are discharged by the court.

It is your sworn duty to decide the factual issues based only on the evidence presented in court. You must not perform any investigation or research on any issue of fact, law, or legal procedure. Additionally you must avoid all publicity about the case and all communications to or from anyone about the case or any issues arising in it. If you are exposed to any such publicity or communications despite your best efforts to follow this instruction to avoid it, you must immediately inform this court about the exposure in writing, without advising any other jurors about the fact or the nature of the exposure, so that the court can follow up, as necessary, with you and/or other jurors, to protect the parties' right to a fair trial.

Do you understand?

### *Commentary*

The Supreme Court ordered that all trial courts provide this instruction to each newly selected juror before the juror leaves the courthouse after selection. *Kervick v. Silver Hills Hospital*, 309 Conn. 688 (2013).

## **1.2 BEFORE EVIDENCE**

- 1.2-1 Introduction**
- 1.2-2 Nature of the Charges**
- 1.2-3 Constitutional Principles**
- 1.2-4 Outline of the Trial**
- 1.2-5 Function of the Court and Jury**
- 1.2-6 Evidence**
- 1.2-7 Credibility of Witnesses**
- 1.2-8 Police Testimony**
- 1.2-9 Objections**
- 1.2-10 Your Conduct as Jurors**
- 1.2-11 Note-Taking**
- 1.2-12 Daily Schedule**
- 1.2-13 Use of Interpreters - In General**
- 1.2-14 Accepting Translation as the Evidence**
- 1.2-15 When defendant has an interpreter**

## **1.2-1 Introduction**

Revised to December 1, 2007

My remarks at this time are to generally acquaint you with some of the legal principles that will control your deliberations and to give you an idea of how the trial will proceed, how long it is expected to take, and what our daily schedule will be. You will get detailed instructions of law at the end of the trial before you begin your deliberations.

## 1.2-2 Nature of the Charges

Revised to December 1, 2007

This is a criminal case. The state has brought charges against *<insert name of defendant>* as follows: *<read information>*.

The information which I just read is not evidence. It is merely the formal means of accusing a person of a crime and bringing (him/her) to trial. You must not consider it as any evidence of the guilt of the defendant or draw any inference of guilt because the defendant has been arrested and formally charged. Each charge against the defendant is set forth in the information as a separate count, and you must consider each count separately in deciding this case.

*<Identify each offense charged and summarize the elements.>*

## 1.2-3 Constitutional Principles

Revised to September 23, 2013

Every defendant in a criminal case is presumed to be innocent and this presumption of innocence remains with the defendant throughout the trial unless and until (he/she) is proved guilty beyond a reasonable doubt.

The burden is on the state to prove the defendant guilty beyond a reasonable doubt, and that burden of proof never shifts throughout the trial. Unless you find at the conclusion of all the evidence that the state has proved beyond a reasonable doubt that the defendant has committed every element of an offense, you must find (him/her) not guilty of that offense. On the other hand, if you are satisfied that the evidence establishes the guilt of the defendant beyond a reasonable doubt, you should not hesitate to find (him/her) guilty.

[<Include only after discussion with and agreement by defense counsel.> The defendant may or may not testify in this case. An accused person has the option to testify or not to testify at the trial. (He/she) is under no obligation to testify. (He/she) has a constitutional right not to testify. You must draw no unfavorable inferences from the defendant's choice not to testify.]

## 1.2-4 Outline of the Trial

Revised to December 1, 2007

The procedure of the trial is as follows:

After I finish this instruction, the state will present its evidence.<sup>1</sup>

Then the defendant may present evidence. The defendant has no legal obligation to present evidence. The law does not require a defendant to prove (his/her) innocence or to produce any evidence. If the defendant does present evidence, the state may then present rebuttal evidence if it so chooses.

When all evidence has been presented to you, the lawyers will then make their argument to you. Bear in mind that argument is not evidence; you may consider argument of counsel during your deliberations, but it is not evidence.

Under our rules, the state argues first; then the defendant through counsel argues; and the state argues a second time. But the defendant does not argue a second time. Each counsel is given the same amount of time for argument; it is only the state that breaks its argument in two parts.

When arguments are completed, I will then instruct you as to the law that you must apply in this case.

At the conclusion of the instructions, I will send you to the jury room to begin your deliberations. That is the first time you will discuss this case with anyone. Up until that time you will not discuss this case with anyone -- not even each other.

Once deliberations start, all deliberations must be conducted in the jury room only when all jurors are present. When you deliberate, you apply the facts that you find to the law as I instruct you to reach your verdict. Your verdict must be unanimous.

---

<sup>1</sup> If the parties will be making opening statements, note that here with an explanation that such statements are not evidence, but merely a brief overview of the evidence that the jury will hear.

## 1.2-5 Function of the Court and Jury

Revised to December 1, 2007

My responsibility, as judge, is to conduct the trial of this case in an orderly, fair and efficient manner, to rule on questions of law arising during the trial, and to instruct you as to the law that applies to this case. It is your duty to accept the law as I state it to you, whether you agree with it or not.

My actions during the trial in ruling on claims or objections by counsel, in comments to counsel, in questions to witnesses or in setting forth the law in instructions to you are not to be taken by you as any indication of my opinion as to how you should determine the issues of fact. If you come to believe during the trial that I have expressed or intimated any opinion as to the facts, you should disregard it. As I've told you, my job as judge is to ensure that there is a fair trial, so that you can decide the case.

During the course of the trial, I may occasionally ask questions of a witness. Do not assume that I hold any opinion on the matter to which my questions may relate. Remember at all times that you, as jurors, are at liberty to disregard all comments of the court in arriving at your own findings as to the facts. You must not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be.

Your function as the jury is to determine the facts. You are the sole and exclusive judges of the facts, and you alone determine the weight, the effect and the value of the evidence, as well as the credibility of the witnesses. You must consider and weigh the testimony of all the witnesses who appear before you and you alone are to determine whether to believe any witness and the extent to which any witness should be believed. It is your responsibility to resolve any conflicts in testimony that may arise during the course of the trial and to determine where the truth lies. You are entitled in the course of evaluating the evidence to draw any and all inferences that you find reasonable and logical from the evidence you hear.

## 1.2-6 Evidence

Revised to December 1, 2007

You will decide what the facts are from the evidence that will be presented in this courtroom. That evidence will consist of the testimony of witnesses, documents and other material admitted into evidence as exhibits, and any facts on which the lawyers agree or that I may instruct you to accept.

The following are not evidence and you must not consider them as evidence in deciding the facts of this case:

- statements and arguments by the attorneys,
- questions and objections of the attorneys, and
- testimony that I instruct you to disregard.

There are two kinds of evidence: direct and circumstantial. Direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence; that is, it is evidence from which you can infer another fact. As an example: if you wake up in the morning and see that the sidewalk is wet, you may infer that it rained during the night. The wet sidewalk is circumstantial evidence that it rained. Other evidence, however, may provide another explanation for the water on the sidewalk, such as a garden hose that was left on overnight. Therefore, before you decide that a fact has been proved by circumstantial evidence, you must consider all the evidence in the light of reason, experience and common sense.

In deciding this case, you may consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

Some evidence may be admitted for a limited purpose only. When I instruct you that a piece of evidence has been admitted for a limited purpose, you must consider it only for that purpose and for no other.

## **1.2-7 Credibility of Witnesses**

Revised to December 1, 2007

In deciding the facts of this case, you are the sole judges of the credibility of the witnesses. You will have to decide which witnesses to believe and which witnesses not to believe. You may believe everything a witness says or only part of it or none of it. Every witness starts on an equal basis. You are to listen to all of them with an open mind and judge them all by the same standards.

## **1.2-8 Police Testimony**

Revised to December 1, 2007

Police will be testifying in this case. You must determine the credibility of police officials in the same way and by the same standards as you would evaluate the testimony of any other witness. The testimony of a police official is entitled to no special or exclusive weight merely because it comes from a police official. You should recall (his/her) demeanor on the stand and manner of testifying, and weigh and balance it just as carefully as you would the testimony of any other witness. You should neither believe nor disbelieve the testimony of a police official just because (he/she) is a police official.

## 1.2-9 Objections

Revised to December 1, 2007

During the course of the trial, counsel for either party may object to a question asked by the other lawyer. It is the responsibility of counsel to object to evidence which he or she believes is not properly admissible, and you should not be prejudiced in any way against a lawyer who makes objections. When that happens, I will rule on that objection. If I sustain the objection, you will not hear an answer to the question and you should not wonder why it was asked or speculate as to what an answer might be. If I overrule an objection, you will hear an answer to the question and you may give it whatever consideration you feel it is entitled to.

There may be times when counsel or the court may ask that you be excused when arguments or objections are made. Those arguments often include matters of evidence that the court may eventually exclude. The reason that I ask you to step out is to assure that you will not hear evidence that is not properly admissible and not to keep from you evidence that you should hear.

## 1.2-10 Your Conduct as Jurors

Revised to September 23, 2013

A few moments ago you took an oath that will govern your conduct as jurors between the time you took that oath and the time that you are discharged by me after you have rendered a verdict in this case. That oath and the rules of court obligate you to do certain things and to avoid other things, and I want to review your obligations for you now.

First, you must decide this case based only on the evidence presented here in court and on the law as I will explain it to you.

Second, do not make up your minds about what your verdict will be until after you have heard all the evidence, heard the closing arguments of the attorneys and my instructions on the law, and, after that, you and your fellow jurors have discussed the evidence. Keep an open mind until that time.

There are some rules that flow from these obligations, and I'll go over them now.

You may not perform any investigations or research or experiments of any kind on your own, either individually or as a group. Do not consult any dictionaries for the meaning of words or any encyclopedias for general information on the subjects of this trial. Do not look anything up on the Internet concerning information about the case or any of the people involved, including the defendant, the witnesses, the lawyers, or the judge. Do not get copies of any statutes that may be referred to in court. Do not go to the scenes where any of the events that are the subject of this trial took place or use Internet maps or Google Earth or any other program or device to search for or view any place discussed during the case.

Why? Because the parties have a right to have the case decided only on evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we don't know about, then your verdict may be influenced by information that has not been tested by the oath to tell the truth and by cross-examination.

The same thing is true of any media reports you may come across about the case or anybody connected with the case. If you do come across any reports in the newspaper or a magazine, on TV, or any Internet site or "blog," you may not read or watch them because they may refer to information not introduced here in court or they may contain inaccurate information. If you are accidentally exposed to such information, do not discuss it with your fellow jurors and notify the clerk in writing.

You may not discuss the case with anyone else, including anyone involved with this case until the trial is over, and you have been discharged as jurors. "Anyone else" includes members of your family, your friends, your coworkers; if you wish, you may tell them you are serving as a juror, but you may not tell them anything else about the case until it is over, and I have discharged you. You may not talk to any of the court personnel, such as marshals and clerks, about the case. You may not ask any friends you have who are lawyers or law enforcement personnel for advice or information about any matters related to this case.

Why is that? Because they haven't heard the evidence you have heard, and in discussing the case with them, you may be influenced in your verdict by their opinions, and that would not be fair to the parties, and it may result in a verdict that is not based on the evidence and the law.

You may not communicate to anyone any information about the case. This includes communication by any means, such as text messages, email, Internet chat rooms, blogs, and social websites like Facebook, MySpace, YouTube, or Twitter.

Both the defendant and the state are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. When you have rendered a verdict and been dismissed by the court, you will be free to discuss the case with anyone you wish, though remember that you are not required to. Until then you must be focused solely on the evidence presented in the courtroom and your obligations to the fairness of the proceeding.

In addition, you may not talk to each other about the case until I tell you to do so, and that will not be until you have heard all the evidence, you have heard the closing arguments of the attorneys, and you have heard my instructions on the law that you are to apply to the facts you find to be true. Why is that? It may seem only natural that you would talk about the case as it is going on. The problem with that is, when people start discussing things, they take positions on them and express opinions which are often hard for them to change later on. So, if you were permitted to discuss the case while it's going on, you might reach conclusions or express opinions before you have heard all the evidence or heard the final arguments of counsel or heard the law that you must apply. Your verdicts in the case might then be improperly influenced by the conclusions or opinions you or your fellow jurors have reached before you knew about all of the evidence or the law that will help you put that evidence in the proper context for your verdicts.

What happens if these rules are violated by a juror? In some cases violations of the rules of juror conduct have resulted in hearings after trial at which the jurors have had to testify about their conduct. In some cases the verdict of the jury has been set aside and a new trial ordered because of jury misconduct. So, it is very important that you abide by these rules.

If someone should attempt to talk to you, please report it to the clerk immediately. If you see or hear anything of a prejudicial nature or that you think might compromise the proper conduct of this trial, please report it to the clerk immediately. These communications should be in writing. Do not discuss any such matters with your fellow jurors.

## 1.2-11 Note-Taking

Revised to June 12, 2009

**Note:** The trial court has discretion to permit the jurors to take notes, but if it is allowed a precautionary instruction must be given. *Esaw v. Friedman*, 217 Conn. 553 (1991).

You may, if you wish, take notes during the course of the trial. *<Have the court officer or marshal distribute note pads and pencils.>* You are not required to take notes, even if all of your fellow jurors do.

Let me emphasize some ground rules for you regarding note-taking. Notes are a sound tool to help you refresh your recollection during the deliberative phase of this trial; however, notes, by themselves, are not foolproof. If there is a conflict between your notes and your recollection, it is your recollection that must prevail.

Additionally, if there is a conflict between your recollection and the notes of a fellow juror, it is your recollection that should prevail. Your notes are not evidence. You will recall my earlier definition of what constitutes evidence. Your verdict must be based exclusively on evidence presented at trial and the principles of law given to you in my final instructions.

The note-taking process should not distract you from focusing on the witness because the credibility you ascribe to a witness is critical. It is essential that you do not allow note-taking to interfere with or to impede your ability to view the witness, to listen to him or her, and to size him or her up; that is to properly evaluate the witness. You should not be so preoccupied with taking notes that you overlook what the witness is saying and how that witness is saying it. You may find that note-taking may distract you from giving full attention to a witness. You will need to observe the demeanor of a witness while he or she is testifying. You will be able to get testimony played back to you during your deliberations, so you do not need to make your own record of exactly what was said.

There is no need to try to take a lot of notes or to take down the testimony word for word. You may not make or modify any notes outside of court. Note pads will be collected at the end of each trial day and kept secure and confidential by the marshal or court officer. No one will look at them.

Whatever notes you take are confidential. You are not to exchange or discuss your notes with your fellow jurors during the trial itself. You may discuss your notes, if you choose, during the deliberation phase. Just as you cannot discuss or deliberate this case among yourselves until the case has been completed, so too, you cannot exchange or discuss your notes until the trial has been completed.

There is no requirement, of course, that you take notes. This is an option to be exercised by each of you individually. Those of you who elect not to take notes will be no less conscientious than jurors who take notes.

The juror who takes few or no notes should not permit his or her individual recollection to be influenced by a juror whose notes may differ from that recollection. Notes are only a tool and are not always accurate. Do not assume that a voluminous note-taker is taking notes that are necessarily more accurate.

I take notes because I may be asked to rule on issues during the course of the evidence. Your decision whether to take notes at any point should not be influenced by my note-taking.

Finally, notwithstanding note-taking by you and your fellow jurors, do not hesitate to seek a reading of any portion of the testimony if you deem it essential during your deliberations.

### *Commentary*

*State v. Mejia*, 233 Conn. 215, 228-29 (1995), applied the rule of *Esaw v. Friedman*, 217 Conn. 553, 556 (1991), to criminal trials. Juror note-taking is improper without the court's permission. *State v. Collins*, 38 Conn. App. 247, 255-60 (1995). In *Collins*, the court instructed the jurors that note-taking was prohibited because "written notes tend to take on a greater significance, in the jury room than they may deserve. . . . There are good note takers, and there are bad note takers. They also tend to cause a mind set, in the person of the taker of the notes." *Id.*, 259 n.11. If the court does allow note-taking, the "court should instruct the jurors that their notes are merely aids to their memories and should not be given precedence over their independent recollection of the evidence, that a juror who has not taken notes should rely on his recollection of the evidence and should not be influenced by the fact that other jurors have done so, and that they should not allow their note-taking to distract them from paying proper attention to the evidence presented to them." *Esaw v. Friedman*, supra 217 Conn. 563.

Practice Book § 42-9 provides that "[t]he members of the jury may, in the discretion of the judicial authority, take notes and submit questions to be asked of witnesses during the trial of a criminal action." There is no appellate authority concerning the procedures to be used if the court allows the jury to submit questions for witnesses.

## 1.2-12 Daily Schedule

Revised to December 1, 2007

The lawyers have informed me that they expect the evidentiary portion of the trial to take *<insert estimated number of days>*. That is only an estimate, and the trial may go for a longer or shorter period of time. I will try my best to keep you informed during the trial if any adjustments are expected.

Once the evidence is presented and the case is presented to you for deliberations, the length of the deliberations will depend on you.

*<Inform the jury of the time trial will begin each day, and when breaks and lunch will occur.>*

During the trial, any communication you wish to make with me must be in the form of a note, which will be read to the lawyers and the parties and made a part of the record. If you have a question, write it down and give it to the marshal or court officer who will bring it to me.

*<Conclude with any other practicalities about the conduct of the trial.>*

## 1.2-13 Use of Interpreters - In General

New, May 10, 2012

Our courts are open to everyone, regardless of their ability to understand and speak English. No matter what language people speak, they have the right to have their testimony heard and understood. In this case, some of the testimony will be given in *<name of language>*, and translated into English by an interpreter.

The interpreter does not work for either side in this case, and is completely neutral in the matter. The interpreter will take an oath to translate between English and *<specify other language>* accurately and impartially to the best of the interpreter's skill and judgment. The interpreter will repeat only what is said and will not add, omit, or summarize anything. You are not to draw any conclusions from any conduct of the interpreter that (he/she) is expressing any opinion about the content of the testimony.

You should treat the interpretation of the witness testimony as if the witness had spoken English and no court interpreter were present. You must evaluate interpreted testimony as you would any other testimony. That is, you must not give interpreted testimony any greater or lesser weight than you would if the witness had spoken English.

You must not make any assumptions about a witness or a party based solely upon the use of an interpreter to assist that witness or party. Do not allow the witness' inability to speak English to affect your view of the witness' credibility.

## **1.2-14 Accepting Translation as the Evidence**

New, May 10, 2012

Some of you may speak or understand the language used by the witness(es). If so, disregard completely what the witness says in the other language. Consider as evidence only what is provided by the court interpreter in English. This ensures that all jurors consider the same evidence.

If, however, during the testimony there is a question as to the accuracy of the English interpretation, you should bring this matter to my attention immediately by raising your hand. You should not ask your question or make any comment about the interpretation in the presence of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy resolved. If, however, after such efforts a discrepancy remains, I emphasize that you must rely only upon the official English interpretation as provided by the court interpreter and disregard any other contrary interpretation.

## 1.2-15 When Defendant has an Interpreter

New, May 10, 2012

The defendant in this case is not sufficiently fluent in the English language for trial purposes. (He/She) has a constitutional right to a court certified interpreter. This is because a defendant who lacks an understanding of the legal proceedings surrounding (his/her) case cannot assist in the defense, challenge the accusers, and make informed choices regarding (his/her) fundamental rights. It is through the use of qualified interpreters that defendants who cannot fully understand English are afforded the same fair treatment and opportunities in their defense as English speaking defendants.

### *Commentary*

The federal due process clause requires continuous translations at trial when a non-English speaking defendant cannot understand or appreciate the proceedings. *State v. Munoz*, 233 Conn. 106, 132 (1995).

## **PART 2: GENERAL INSTRUCTIONS**

**2.1 OPENING**

**2.2 CONSTITUTIONAL PRINCIPLES**

**2.3 MENS REA**

**2.4 EVIDENCE IN GENERAL**

**2.5 SPECIAL TYPES OF WITNESSES**

**2.6 SPECIAL TYPES OF EVIDENCE**

**2.7 GENERAL DEFENSES**

**2.8 JUSTIFICATION DEFENSES**

**2.9 AFFIRMATIVE DEFENSES**

**2.10 CONCLUDING**

**2.11 COMMON SEGMENTS OF OFFENSE  
INSTRUCTIONS**

**2.12 PART B INFORMATIONS**

## **2.1 OPENING**

**2.1-1 Court's Duty to Instruct**

**2.1-2 Function of Court and Jury**

## **2.1-1 Court's Duty to Instruct**

Revised to November 6, 2014

Members of the jury, you have heard the evidence presented in this case. It is now my duty to instruct you as to the law that you are to apply in this case.

## 2.1-2 Function of Court and Jury

Revised to November 6, 2014

It is exclusively the function of the court to state the rules of law that govern the case, with instructions as to how you are to apply them. It is your obligation to accept the law as I state it. You must follow all of my instructions and not single out some and ignore others; they are all equally important.

You are the sole judge of the facts. It is your duty to find the facts. You are to recollect and weigh the evidence and form your own conclusions as to what the ultimate facts are. You may not go outside the evidence introduced in court to find the facts. This means that you may not resort to guesswork, conjecture or suspicion, and you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy.

You should not be influenced by my actions during the trial in ruling on motions or objections by counsel, or in comments to counsel, or in questions to witnesses, or in setting forth the law in these instructions. You are not to take my actions as any indication of my opinion as to how you should determine the issues of fact.

Any reference I make to the evidence is only for the purpose of clarification of some point of law or a point of illustration or to refresh your recollection as to the general nature of the testimony. I do not intend to emphasize any evidence I mention or limit your consideration to it. If I do not mention certain evidence, you will use the evidence from your recollection. If my recollection of the evidence does not comport with your recollection, then it is your recollection which must prevail because you are the exclusive trier of the facts.

The defendant justly relies upon you to consider carefully (his/her) claims, to consider carefully all of the evidence and to find (him/her) not guilty if the facts and the law require such a verdict. The defendant rightfully expects fair and just treatment at your hands.

At the same time, the state of Connecticut and its people look to you to render a verdict of guilty if the facts and law require such a verdict.<sup>1</sup>

The law prohibits the state's attorney or defense counsel from giving personal opinions as to whether the defendant is guilty or not guilty. It is not their assessment of the credibility of witnesses that matters, only yours.

---

<sup>1</sup> Do not include the following language: "The state as well does not want the conviction of an innocent person. The state is as much concerned in having an innocent person acquitted as in having a guilty person convicted." *State v. Carrion*, 313 Conn. 823, 847-49 (2014) (using its supervisory authority to direct trial courts to not include this language). This language has repeatedly been criticized by the Appellate Court. *Id.*, 848-49 n. 17.

### ***Commentary***

See, e.g., *State v. Faust*, 237 Conn. 454, 477-78 (1996); *State v. Mejia*, 233 Conn. 215, 242-43 (1995); *State v. Francis*, 228 Conn. 118, 133-35 (1993); *State v. Walton*, 227 Conn. 32, 63 (1993). *State v. Gannon*, 75 Conn. 206, 218-37 (1902), contains a thorough discussion regarding the functions of the court and jury.

### ***Marshaling the evidence***

In *State v. Lemoine*, 233 Conn. 502 (1995), the Supreme Court addressed the issue of "whether the trial court, in its jury instructions in a criminal trial, has a constitutional obligation to refer to the evidence relating to the crimes charged in the information." *Id.*, 504. The Court concluded "that review of or comment on the evidence is not constitutionally mandated where the trial court, in the exercise of its sound discretion, determines that such commentary is not necessary and that the jury would be properly instructed and not misled in its absence." *Id.*, 512.

The trial court should always caution the jury that "it should rely on its own recollection of the facts, rather than on the characterizations set forth by the court in the charge" and that the court, in commenting on the evidence, does "not intend either to emphasize certain evidence above other evidence or to avoid mentioning certain evidence." *State v. Delgado*, 247 Conn. 616, 627-31 (1999); see also *State v. Davis*, 255 Conn. 782, 797-800 (2001); *State v. Reid*, 254 Conn. 540, 559-60 (2000); *State v. Johnson*, 53 Conn. App. 476, 482-84, cert. denied, 249 Conn. 929 (1999); *State v. Adams*, 52 Conn. App. 643, 647-48 (1999), aff'd, 252 Conn. 752, cert. denied, 531 U.S. 876, 121 S.Ct. 182, 148 L.Ed.2d 126 (2000).

It is not necessary to marshal the evidence when the issues are not complex. *State v. Youngs*, 97 Conn. App. 348, 366-67, cert. denied, 280 Conn. 930 (2006).

## **2.2 CONSTITUTIONAL PRINCIPLES**

**2.2-1 Presumption of Innocence**

**2.2-2 Burden of Proof**

**2.2-3 Reasonable Doubt**

**2.2-4 Defendant's Option to Testify**

**2.2-5 Self-Represented Defendant**

## 2.2-1 Presumption of Innocence

Revised to December 1, 2007 (modified November 6, 2014)

In this case, as in all criminal prosecutions, the defendant is presumed to be innocent unless and until proven guilty beyond a reasonable doubt. This presumption of innocence was with this defendant when (he/she) was first presented for trial in this case. It continues with (him/her) throughout this trial, unless and until such time as all evidence produced here in the orderly conduct of the case, considered in the light of these instructions of law, and deliberated upon by you in the jury room, satisfies you beyond a reasonable doubt that (he/she) is guilty. The presumption of innocence applies individually to each crime charged and it may be overcome as to each specific crime only after the state introduces evidence that establishes the defendant's guilt as to each crime charged beyond a reasonable doubt.<sup>1</sup>

If and when the presumption of innocence has been overcome by evidence proving beyond a reasonable doubt that the accused is guilty of the crime charged, then it is the sworn duty of the jury to enforce the law and to render a guilty verdict.<sup>2</sup>

---

<sup>1</sup> See *State v. Gerald W.*, 103 Conn. App. 784, 790, cert. denied, 284 Conn. 933 (2007).

<sup>2</sup> See *State v. DelValle*, 250 Conn. 466, 473 n.10 (1999) (encouraging use of this language to deter jury nullification).

### *Commentary*

"The presumption of innocence is not evidence . . . but instead is a way of describing the prosecution's duty to produce evidence of guilt and to convince the jury beyond a reasonable doubt." *State v. Gerald W.*, 103 Conn. App. 784, 789 (2007). The presumption of innocence and the reasonable doubt standard are "inextricably intertwined." *Id.*, 789-90 n.4; see also *State v. Jackson*, 283 Conn. 111, 116 (2007).

"[I]n a criminal case the term [presumption of innocence] does convey a special and perhaps useful hint over and above the other form of the rule about the burden of proof, in that it cautions the jury to put away from their minds all the suspicion that arises from the arrest, the indictment, and the arraignment, and to reach their conclusion solely from the legal evidence adduced. In other words, the rule about burden of proof requires the prosecution by evidence to convince the jury of the accused's guilt; while the presumption of innocence, too, requires this, but conveys for the jury a special and additional caution (which is perhaps only an implied corollary to the other) to consider, in the material for their belief, *nothing but the evidence, i.e.*, no surmises based on the present situation of the accused." (Emphasis in original; internal quotation marks omitted.) *State v. Dickson*, 150 Conn. App. 637, 654, cert. granted on other grounds, 314 Conn. 913 (2014) (rejecting defendant's request to use "presumed to be not guilty" rather than "presumed to be innocent").

## **2.2-2 Burden of Proof**

Revised to December 1, 2007

The state has the burden of proving that the defendant is guilty of the crime with which (he/she) is charged. The defendant does not have to prove (his/her) innocence. This means that the state must prove beyond a reasonable doubt each and every element necessary to constitute the crime charged.

Whether the burden of proof resting upon the state is sustained depends not on the number of witnesses, nor on the quantity of the testimony, but on the nature and quality of the testimony. Please bear in mind that one witness's testimony is sufficient to convict if it establishes all the elements of the crime beyond a reasonable doubt.

## 2.2-3 Reasonable Doubt

Revised to December 1, 2007

The meaning of reasonable doubt can be arrived at by emphasizing the word reasonable. It is not a surmise, a guess or mere conjecture.<sup>1</sup> It is not a doubt raised by anyone simply for the sake of raising a doubt. It is such a doubt as, in serious affairs that concern you, you would heed; that is, such a doubt as would cause reasonable men and women to hesitate to act upon it in matters of importance.<sup>2</sup> It is not hesitation springing from any feelings of pity or sympathy for the accused or any other person who might be affected by your decision. It is, in other words, a real doubt, an honest doubt, a doubt that has its foundation in the evidence or lack of evidence.<sup>3</sup> It is doubt that is honestly entertained and is reasonable in light of the evidence after a fair comparison and careful examination of the entire evidence.<sup>4</sup>

Proof beyond a reasonable doubt does not mean proof beyond all doubt; the law does not require absolute certainty on the part of the jury before it returns a verdict of guilty.<sup>5</sup> The law requires that, after hearing all the evidence, if there is something in the evidence or lack of evidence that leaves in your minds, as reasonable men and women, a reasonable doubt as to the guilt of the accused, then the accused must be given the benefit of that doubt and acquitted. Proof beyond a reasonable doubt is proof that precludes every reasonable hypothesis except guilt and is inconsistent with any other rational conclusion.<sup>6</sup>

---

<sup>1</sup> *State v. Griffin*, 253 Conn. 195, 206 (2000).

<sup>2</sup> *State v. Morant*, 242 Conn. 666, 688 (1997); *State v. Baines*, 56 Conn. App. 443, 449, cert. denied, 252 Conn. 947 (2000); *State v. Otero*, 49 Conn. App. 459, 473, cert. denied, 247 Conn. 910 (1998) (following U.S. Supreme Court's recommendation to instruct on the kind of doubt that would make a person hesitate to act, not the kind on which he would be willing to act). In *State v. Griffin*, supra, 253 Conn. 207 n.14, the Supreme Court noted the criticism of the phrase "hesitate to act," but found no persuasive reason to reject it.

<sup>3</sup> *State v. Velasco*, 253 Conn. 210, 249 (2000); *State v. Griffin*, supra, 253 Conn. 207.

<sup>4</sup> *State v. Torres*, 82 Conn. App. 823, 836-37, cert. denied, 270 Conn. 909 (2004).

<sup>5</sup> *State v. Ryerson*, 201 Conn. 333, 342 (1986) ("near certitude" language, while not inaccurate, is not mandated); *State v. Holley*, 90 Conn. App. 350, 359, cert. denied, 275 Conn. 929 (2005).

<sup>6</sup> *State v. Hines*, 243 Conn. 796, 820 (1998); *State v. Denson*, 67 Conn. App. 803, 820-22, cert. denied, 260 Conn. 915 (2002).

### Commentary

"It is fundamental that proof of guilt in a criminal case must be beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). . . . The reasonable doubt concept provides concrete substance for the presumption of innocence -- that bedrock axiomatic and elementary principle whose enforcement lies at the foundation of the

administration of our criminal law." (Citations omitted; internal quotation marks omitted.) *State v. Whipper*, 258 Conn. 229, 296 (2001), overruled on other grounds, *State v. Cruz*, 269 Conn. 97 (2004). See generally *State v. Jackson*, 283 Conn. 111, 120-25 (2007); *State v. Montgomery*, 254 Conn. 694, 729-31 (2000); *State v. Velasco*, 253 Conn. 210, 248-49 (2000); *State v. Ellis*, 232 Conn. 691, 704-06 (1995); *State v. DelVecchio*, 191 Conn. 412, 417-25 (1983); *State v. Romero*, 42 Conn. App. 555, 560-63, cert. denied, 239 Conn. 935 (1996); *State v. Hansen*, 39 Conn. App. 384, 402-06, cert. denied, 235 Conn. 928 (1995); *State v. Hanks*, 39 Conn. App. 333, 350-52, cert. denied, 235 Conn. 926 (1995); *State v. Edwards*, 39 Conn. App. 242, 247-50, cert. denied, 235 Conn. 924 (1995); *State v. Colon*, 37 Conn. App. 635, 641-43, cert. denied, 234 Conn. 911 (1995).

A deficient reasonable doubt instruction is error to which "harmless error" analysis cannot be applied. *Sullivan v. Louisiana*, 508 U.S. 275, 281, 111 S.Ct. 328, 112 L.Ed.2d 339 (1993).

### ***Undesirable language***

In *State v. Schiappa*, 248 Conn. 132, 175, cert. denied, 528 U.S. 862, 120 S.Ct. 152, 145 L.Ed.2d 129 (1999), the Supreme Court directed trial courts to avoid use of the "protect the innocent and not the guilty" language in the future. See also *State v. Watson*, 251 Conn. 220, 225-28 (1999); *State v. Coleman*, 251 Conn. 249, 251, cert. denied, 529 U.S. 1061, 120 S.Ct. 1570, 146 L.Ed.2d 473 (1999).

The Supreme Court directed courts to refrain from using the phrase "ingenuity of counsel." *State v. DelValle*, 250 Conn. 466, 475-76 (1999).

The appellate courts have disapproved of instructions that define "reasonable doubt" as "grave uncertainty," "an actual substantial doubt," and "a moral certainty." *State v. Hines*, supra, 243 Conn. 819 n.18.

Courts should not use "two inference" language ("if two conclusions reasonably can be drawn from the evidence, one of guilt and one of innocence, the jury must adopt the conclusion of innocence") because "standing alone, such language may mislead a jury into thinking that the state's burden is somehow less than proof beyond a reasonable doubt." *State v. Griffin*, supra, 253 Conn. 209-10. A permissible alternative, which would logically follow the final sentence of this instruction, is: "If you can, in reason, reconcile all of the facts proved with any reasonable theory consistent with the innocence of the accused, then you cannot find him guilty." *Id.*, 210 n.18. See also *State v. Lemoine*, 256 Conn. 193, 205 (2001).

It is unnecessary and may confuse the jury to compare the reasonable doubt standard to the civil standard of clear and convincing evidence. *State v. Fagan*, 92 Conn. App. 44, 58, cert. denied, 276 Conn. 924 (2005).

## 2.2-4 Defendant's Option to Testify

Revised to December 1, 2007 (modified November 6, 2014)

The defendant has not testified in this case. An accused person has the option to testify or not to testify at the trial. (He/she) is under no obligation to testify. (He/she) has a constitutional right not to testify. You must draw no unfavorable inferences from the defendant's choice not to testify.

### *Commentary*

General Statutes § 54-84 (b) provides that "[u]nless the accused requests otherwise, the court shall instruct the jury that they may draw no unfavorable inferences from the accused's failure to testify." Section 54-84 (b) reversed prior Connecticut case law that held that a defendant who did not testify at trial was not entitled to have the jury instructed that his or her choice not to testify should not be considered against him or her. See *State v. Nemeth*, 182 Conn. 403, 409-10 (1980); *State v. Miller*, 34 Conn. App. 250, 255-61, cert. denied, 230 Conn. 902 (1994). The statute imposes a definite duty upon the court, without a request from the defendant, to instruct the jury that it must not draw any unfavorable inferences from the defendant's constitutional privilege of silence. *State v. Hicks*, 97 Conn. App. 266, 271, cert. denied, 280 Conn. 930 (2006). The omission of a "no adverse inference" instruction is plain error and due to its constitutional magnitude can never be subject to harmless error analysis. *State v. Ruocco*, 151 Conn. App. 732, 743-44, cert. granted, 314 Conn. 923 (2014).

Although the instruction need not recite the statutory language verbatim, it must accurately convey the substantive meaning. See *State v. Yurch*, 229 Conn. 516, 322 (1994), cert. denied, 513 U.S. 965, 115 S.Ct. 430, 130 L.Ed.2d 343 (1994) (improper to use the word "unreasonable" instead of "unfavorable"); *State v. Vega*, 36 Conn. App. 41, 48 (1994) (the use of "unfair" rather than "unfavorable" was reversible error).

In *State v. Casanova*, 255 Conn. 581, 600 (2001), the Supreme Court held that it was not improper to use the "arguably negative" statutory phrase "failure to testify," because "the charge as a whole . . . was neutral in substance," in that it contained the neutral phrases "option to testify," "no obligation to testify," and "constitutional right not to testify." It also held that the trial court was not required by § 54-84 (b) to use the defendant's requested language. While this case establishes that a reference to a defendant's "failure" to testify does not constitute a constitutional or statutory violation, the cautious approach is to use consistently neutral language.

A defendant does not have "a constitutional right to be canvassed personally" as to his or her waiver of this instruction; counsel for the defendant, acting on the defendant's behalf, may request that the court omit the instruction from its charge. *State v. Stewart*, 64 Conn. App. 340, 351, cert. denied, 258 Conn. 909 (2001). "Although the right not to testify is personal to the accused, the decision as to whether a court should include an instruction, pursuant to § 54-84 (b), regarding an accused's decision not to testify is a matter of trial strategy." *Id.*, 353.

## 2.2-5 Self-represented Defendant

New, June 12, 2009

**Note: This instruction should be given either at the beginning of the trial or at any time during the trial when a defendant has decided on self-representation.**

*<Insert as appropriate:>*

- The defendant has decided to represent (himself/herself) in this trial, rather than being represented by an attorney.
- The defendant has decided to continue this trial representing (himself/herself), and is no longer represented by *<name of attorney>*.

(He/She) has a constitutional right to do so. (His/Her) decision to proceed without an attorney has no bearing on whether (he/she) is guilty or not guilty, and you are not to draw any inference unfavorable to the defendant from the exercise of (his/her) right to represent (himself/herself).

[*<If standby counsel has been appointed:>* *<Name of attorney>*, a lawyer, will be seated at the counsel table with the defendant. The defendant may at any time consult with Atty. *<\_\_\_\_\_>*. ]

## **2.3 MENS REA**

**2.3-1 Intent: General and Specific -- § 53a-3 (11)**

**2.3-2 Evidence of Intent**

**2.3-3 Knowledge -- § 53a-3 (12)**

**2.3-4 Recklessness -- § 53a-3 (13)**

**2.3-5 Criminal Negligence -- § 53a-3 (14)**

**2.3-6 Intent to Defraud**

## 2.3-1 Intent: General and Specific -- § 53a-3 (11)

Revised to December 1, 2007

Intent relates to the condition of mind of the person who commits the act, his or her purpose in doing it. The law recognizes two types of intent, general intent and specific intent.

### General intent

General intent is the intent to engage in conduct. Thus, in this case, it is not necessary for the state to prove that the defendant intended the precise harm or the precise result which eventuated. Rather, the state is required to prove that the defendant intentionally and not inadvertently or accidentally engaged in (his/her) actions. In other words, the state must prove that the defendant's actions were intentional, voluntary and knowing rather than unintentional, involuntary and unknowing.

### Specific intent

Specific intent is the intent to achieve a specific result. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. What the defendant intended is a question of fact for you to determine. <See *Evidence of Intent, Instruction 2.3-2.*>

<Court may insert example to illustrate the difference.>

[<If both general and specific intent crimes have been charged:>

The concept of specific intent applies to count(s) \_\_\_\_.

The concept of general intent applies to count(s) \_\_\_\_.]

### Commentary

It is improper to read the entire statutory definition of intent when instructing on a specific intent crime. *State v. Holmes*, 75 Conn. App. 721, 737 (2003), cert. denied, 264 Conn. 903 (2003); *State v. DeBarros*, 58 Conn. App. 673, 684, cert. denied, 254 Conn. 931 (2000).

"[T]he difference between general and specific intent [is defined] as follows: 'When the elements of a crime consist of a description of a particular act and a mental element not specific in nature, the only issue is whether the defendant intended to do the proscribed act. If he did so intend, he has the requisite general intent for culpability. When the elements of a crime include a defendant's intent to achieve some result additional to the act, the additional language distinguishes the crime from those of general intent and makes it one requiring a specific intent.'" *State v. Shine*, 193 Conn. 632, 638 (1984).

## 2.3-2 Evidence of Intent

Revised to December 1, 2007

What a person's intention was is usually a matter to be determined by inference. No person is able to testify that (he/she) looked into another's mind and saw therein a certain knowledge or a certain purpose or intention to do harm to another. Because direct evidence of the defendant's state of mind is rarely available, intent is generally proved by circumstantial evidence. The only way a jury can ordinarily determine what a person's intention was at any given time is by determining what the person's conduct was and what the circumstances were surrounding that conduct and from that infer what (his/her) intention was.

To draw such an inference is the proper function of a jury, provided of course that the inference drawn complies with the standards for inferences as explained in connection with my instruction on circumstantial evidence. The inference is not a necessary one. You are not required to infer a particular intent from the defendant's conduct or statements, but it is an inference that you may draw if you find it is reasonable and logical. I again remind you that the burden of proving intent beyond a reasonable doubt is on the state.

[<If the defendant has testified about (his/her) intent:>

In this case, the defendant has testified as to (his/her) intent. You should consider my earlier instruction on evaluating the defendant's testimony as you would any other witness.]

[<If evidence of motive has been introduced:>

Evidence of motive, or the lack of it, may also be considered by you in determining the issue of intent. <See Motive, Instruction 2.6-2.>]

### *Commentary*

In *State v. Orta*, 66 Conn. App. 783, 793-94 (2001), cert. denied, 259 Conn. 907 (2002), the defendant claimed that the portion of the jury instruction on intent unduly emphasized the absence of the defendant's testimony during trial and amounted to an improper comment on his failure to testify. In concluding that the trial court's instruction was not improper, the Appellate Court reasoned: "We are not persuaded that the phrases, '[a] man may take the [witness] stand and testify directly as to what his intention was,' and 'aside from the man's own testimony,' even remotely amount to a comment on the defendant's election not to testify, especially in view of the court's earlier instruction that no negative inference should be drawn against the defendant on the basis of his election not to testify." *Id.*, 794.

## 2.3-3 Knowledge -- § 53a-3 (12)

Revised to December 1, 2007

A person acts "knowingly" with respect to conduct or to a circumstance described by a statute defining an offense when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. An act is done (knowingly / with knowledge) if done voluntarily and purposely, and not because of mistake, inadvertence or accident.

Ordinarily, knowledge can be established only through an inference from other proven facts and circumstances. The inference may be drawn if the circumstances are such that a reasonable person of honest intention, in the situation of the defendant, would have concluded that *<insert factual statement of the crime charged; for example: "the instrument was forged">*. The determinative question is whether the circumstances in the particular case form a basis for a sound inference as to the knowledge of the defendant in the transaction under inquiry.

## 2.3-4 Recklessness -- § 53a-3 (13)

Revised to December 1, 2007

A person acts "recklessly" with respect to a result or to a circumstance described by a statute defining an offense when the defendant is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. The standard of conduct of a reasonable person in the same situation as the defendant is the doing of something that a reasonably prudent person would do under the circumstances or omitting to do what a reasonably prudent person would not do under the circumstances.

A gross deviation is a great or substantial deviation, not just a slight or moderate deviation. There must be a great or substantial difference between, on the one hand, the defendant's conduct in disregarding a substantial and unjustifiable risk, and, on the other hand, what a reasonable person would have done under the circumstances. Whether a risk is substantial and unjustifiable is a question of fact for you to determine under all the circumstances.

### *Commentary*

See *State v. Otto*, 50 Conn. App. 1, 10-11, cert. denied, 247 Conn. 927-28 (1998) (approving this language); *State v. Bunker*, 27 Conn. App. 322, 329 (1992) (the term "gross deviation" has its ordinary meaning).

"General Statutes § 53a-3 (13) require[s] the court to define and explain the objective standard of care of a reasonable person." *State v. Salz*, 26 Conn. App. 448, 456 (1992), aff'd, 226 Conn. 20 (1993). For a discussion of the potential for confusion in defining the reasonable person standard, see *State v. Salz*, 226 Conn. 20, 42-50 (1993) (*Berdon, J.*, dissenting).

## 2.3-5 Criminal Negligence -- § 53a-3 (14)

Revised to December 1, 2007

A person acts with "criminal negligence" with respect to a result or to a circumstance described by a statute defining an offense when (he/she) fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

The failure to perceive the risk must be a gross deviation from the standard of a reasonable person. The standard of conduct of a reasonable person in the same situation as the defendant is the doing of something that a reasonably prudent person would do under the circumstances or omitting to do what a reasonably prudent person would not do under the circumstances.

A gross deviation is a great or substantial deviation, not just a slight or moderate deviation. There must be a great or substantial difference between, on the one hand, the defendant's conduct in failing to perceive a substantial and unjustifiable risk, and, on the other hand, what a reasonable person would have done under the circumstances. Whether the risk is substantial and unjustifiable is a question of fact for you to determine under the circumstances.

### *Commentary*

See *State v. McMahon*, 257 Conn. 544, 568 (2001), cert. denied, 534 U.S. 1130, 122 S.Ct. 1069, 151 L.Ed.2d 972 (2002) (explaining the difference between recklessness and criminal negligence); *State v. Ortiz*, 29 Conn. App. 825, 833 (1993) (criminal negligence requires more than the civil standard of negligence); *State v. Bunker*, 27 Conn. App. 322, 329 (1992) (the term "gross deviation" has its ordinary meaning).

## 2.3-6 Intent to Defraud

Revised to December 1, 2007

A person acts with the intent to defraud when (he/she) deceives or tricks another person with the intent to deprive that person of (his/her) right, or in some manner to do (him/her) an injury.

The word "defraud" means to practice fraud, to cheat or trick, to deprive a person of property or any interest or right by fraud, deceit or artifice.

The meaning of "fraud," both in its legal usage and its common usage, is the same: a deliberately planned purpose and intent to cheat or deceive or unlawfully deprive someone of some advantage, benefit or property. "Fraudulently" means done, made or effected with a purpose or design to carry out a fraud.

### *Commentary*

See *State v. DeCaro*, 252 Conn. 229, 242 n.12 (2000) ("defraud" requires the intent to cause injury); *State v. Yurch*, 37 Conn. App. 72, 80-81, appeal dismissed, 235 Conn. 469 (1995) (distinguishing an intent to defraud from an intent to deceive).

## **2.4 EVIDENCE IN GENERAL**

- 2.4-1 Direct and Circumstantial Evidence**
- 2.4-2 Credibility**
- 2.4-3 Impeachment -- Inconsistent Statements**
- 2.4-4 Impeachment -- *Whelan* Rule**
- 2.4-5 Impeachment -- Prior Convictions or  
Misconduct of Witness**
- 2.4-6 Failure to Produce Witness**
- 2.4-7 Defendant's Testimony**
- 2.4-8 Impeachment -- Prior Convictions of  
Defendant**

## 2.4-1 Direct and Circumstantial Evidence

Revised to December 1, 2007 (modified June 13, 2008)

The evidence from which you are to decide what the facts are consists of: 1) the sworn testimony of witnesses both on direct and cross examination, regardless of who called the witness; 2) the exhibits that have been admitted into evidence; 3) any facts that the court judicially noticed; and 4) any stipulations of the parties.

In reaching your verdict, you should consider all the testimony and exhibits admitted into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. These include:

- Arguments and statements by lawyers. The lawyers are not witnesses. What they have said in their closing arguments is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls. It is not proper for the attorneys to express their opinions on the ultimate issues in the case or to appeal to your emotions.
- Testimony that has been excluded or stricken. [*Include if appropriate:*> Some testimony and exhibits have been admitted for limited purposes; whenever I have given a limiting instruction, you must follow it.]
- The document called the "information," which you will have with you at the time of deliberation. The information is merely the formal manner of accusing a person of a crime in order to bring (him/her) to trial. You must not consider the information as any evidence of the guilt of the defendant, or draw any inference of guilt because (he/she) has been charged with a crime. [*Include if appropriate:*> You will note that each count in the information contains within it the alleged time, date and location of the offense. The state does not have to prove the exact time, date or location of the offense beyond a reasonable doubt. However, the state must prove each element of each offense, including identification of the defendant, beyond a reasonable doubt.]

There are, generally speaking, two kinds of evidence, direct and circumstantial. Direct evidence is testimony by a witness about what that witness personally saw or heard or did.

Circumstantial evidence is indirect evidence, that is, evidence from which you could find that another fact exists, even though it has not been proved directly. There is no legal distinction between direct and circumstantial evidence as far as probative value; the law permits you to give equal weight to both, but it is for you to decide how much weight to give to any particular evidence.

Circumstantial evidence of an event is the testimony of witnesses as to the existence of certain facts or evidence or the happening of other events from which you may logically conclude that the event in question did happen. By way of example, let us assume that it is a December night and you're preparing to retire for the evening. You look out the window and you see it is snowing. You wake up the next morning, come to court, and testify that the night before it was

snowing in the area of your house. That is direct evidence of the fact that it snowed the night before. You saw it and you came into court and testified to that fact.

Now assume that it is another December night, the weather is clear, there is no snow on the ground, and you retire for the evening. You wake up the next morning, you look out the window and you see snow on the ground and footprints across your lawn. You come into court and you testify to those facts. The evidence that the night before there was no snow on the ground and the next morning there was snow on the ground and footprints across your lawn is direct evidence. That direct evidence, however, is circumstantial evidence of the fact that some time during the night it snowed and that some time thereafter someone walked across your lawn.

The only practical difference between direct and circumstantial evidence is that when you have direct evidence of some fact, the main thing you have to do is determine the believability of the direct testimony given, the credibility of the witness. With circumstantial evidence, you must first determine the credibility of the witness or witnesses and decide whether the facts testified to did exist. Then you must decide whether the happenings of those events or the existence of those facts leads logically to the conclusion that other events occurred or other facts exist, and ultimately, whether the crime alleged was committed by the accused.

There is no reason to be prejudiced against evidence simply because it is circumstantial evidence. You make decisions on the basis of circumstantial evidence in the everyday affairs of life. There is no reason why decisions based on circumstantial evidence should not be made in the courtroom. In fact, proof by circumstantial evidence may be as conclusive as would be the testimony of witnesses speaking on the basis of their own observation. Circumstantial evidence, therefore, is offered to prove a certain fact from which you are asked to infer the existence of another fact or set of facts. Before you decide that a fact has been proved by circumstantial evidence, you must consider all of the evidence in light of reason, experience and common sense.

### *Commentary*

#### *Accumulated inferences*

In *State v. Crafts*, 226 Conn. 237 (1993), the defendant argued "that the accumulation of multiple 'reasonable' inferences runs the risk of producing ultimate findings that contain 'reasonable doubts.'" *Id.*, 244. The Court rejected this because it rested "on the assumption that inferential thinking necessarily proceeds in a pyramid of dependent inferences, so that ultimate findings inherently include the possible alternatives that may exist in the underlying inferences." *Id.*, 244-45. "[I]nferential reasoning relies on the entirety of the evidence to support initial and then to reinforce subsequent inferences such that the ultimate conclusions are found beyond a reasonable doubt." *Id.*, 246 n.4.

The Court cites several cases from other jurisdictions that require that when the case is based on circumstantial evidence, the state has the burden of proving that no innocent explanations exist. *Id.*, 247 n.5. The Court finds that such a rule is not necessary. "[O]ur rule comports with the basic understanding that it is the jury's function to draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical." *Id.*, 247.

### ***The two-inference rule***

The two-inference rule, which requires that any conclusion reasonably to be drawn from the evidence that is consistent with the innocence of the accused must prevail, does not apply to inferences drawn from evidentiary facts. *State v. Salz*, 226 Conn. 20, 29 (1993); *State v. Foord*, 142 Conn. 285, 294 (1955). "[I]n viewing evidence which could yield contrary inferences, the jury is not barred from drawing those inferences consistent with guilt and is not required to draw only those inferences consistent with innocence. The rule is that the jury's function is to draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical." (Internal quotation marks omitted.) *State v. Grant*, 219 Conn. 596, 604 (1991). This distinction between proof of guilt and establishment of evidentiary facts illuminates "the difference between the jury's function in drawing inferences from specific facts or evidence and its function in coming to the ultimate conclusion as to guilt or innocence on the basis of all the evidence." *State v. Dumlao*, 3 Conn. App. 607, 616 (1985).

### ***Facts and standards of proof***

Numerous cases have found it error to instruct the jury to apply the "more probable than not" standard to circumstantial evidence. See *State v. Rodgers*, 198 Conn. 53, 56-60 (1985); *State v. McDonough*, 205 Conn. 352, 355-56 (1987), cert. denied, 485 U.S. 906, 108 S.Ct. 1079, 99 L.Ed.2d 238 (1988); *State v. Lee*, 53 Conn. App. 690, 699 n.5 (1999), and cases cited therein. The Court acknowledges that "as an abstract proposition, it is not illogical to draw an inference if the evidence establishes that it is probable," but recognizes that such instructions have "potential for misleading a jury concerning the state's burden to prove each element of the crime beyond a reasonable doubt." *State v. McDonough*, supra, 355-56.

Courts have been criticized for instructing that facts, whether direct or inferred, must be proved beyond a reasonable doubt. See *State v. Williams*, 220 Conn. 385, 397-400 (1991) (erroneous to instruct that evidentiary facts had to be proved beyond a reasonable doubt); *State v. James*, 211 Conn. 555, 581 (1989) ("[t]he state may well have complained that such an instruction imposed a far greater burden upon it than the standard requirement that only the inference of guilt as to each element of the crime, as distinguished from the totality of the subordinate facts from which the inference is to be drawn, need be proved beyond a reasonable doubt."); *State v. Francis*, 83 Conn. App. 226, 239-43, cert. denied, 270 Conn. 912 (2004) (requiring facts to be proved beyond a reasonable doubt is overly favorable to the defendant).

"We note that the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt." (Internal quotation marks omitted.) *State v. Martin*, 285 Conn. 135, 147-48 (2008); see also *State v. Pinnock*, 220 Conn. 765, 771 (1992). "It is axiomatic that the state's burden of proof beyond a reasonable doubt applies to each and every element comprising the offense charged. But this burden of proof does not operate upon each of the many subsidiary, evidentiary, incidental or subordinate facts, as distinguished from elements or ultimate facts, upon which the prosecution may collectively rely to establish a particular of the crime beyond a reasonable doubt." (Internal quotation marks omitted.) *State v. Williams*, supra, 220 Conn. 398; *State v. McDonough*, supra, 205 Conn. 362

(*Callahan, J.*, concurring); see also *State v. Gonzalez*, 205 Conn. 673, 694 (1987) (*Callahan, J.*, concurring).

## 2.4-2 Credibility

Revised to November 1, 2008 (modified May 10, 2012)

In deciding what the facts are, you must consider all the evidence. In doing this, you must decide which testimony to believe and which testimony not to believe. You may believe all, none or any part of any witness's testimony. In making that decision, you may take into account a number of factors including the following: 1) was the witness able to see, or hear, or know the things about which that witness testified? 2) how well was the witness able to recall and describe those things? 3) what was the witness's manner while testifying? 4) did the witness have an interest in the outcome of this case or any bias or prejudice concerning any party or any matter involved in the case? 5) how reasonable was the witness's testimony considered in light of all the evidence in the case? and 6) was the witness's testimony contradicted by what that witness has said or done at another time, or by the testimony of other witnesses, or by other evidence?

If you think that a witness has deliberately testified falsely in some respect, you should carefully consider whether you should rely upon any of that witness's testimony.<sup>1</sup>

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

These are some of the factors you may consider in deciding whether to believe testimony.

The weight of the evidence presented does not depend on the number of witnesses.<sup>2</sup> It is the quality of the evidence, not the quantity of the evidence, that you must consider.

---

<sup>1</sup> It is not necessary to specifically instruct the jury that if they find that a witness has intentionally testified falsely as to one thing, then it can reject that witness's entire testimony. *State v. Stevenson*, 53 Conn. App. 551, 577-79, cert. denied, 250 Conn. 917 (1999). Disbelief of testimony, by itself, does not prove the opposite. In *State v. McCarthy*, 105 Conn. App. 596, 621, cert. denied, 286 Conn. 913 (2008), the court's refusal to charge on this issue was not error.

<sup>2</sup> "[C]ourts should refrain from giving a number of witnesses instruction when the defendant presents no witnesses." *State v. Ouellette*, 110 Conn. App. 401, 415, cert. denied, 289 Conn. 951 (2008).

### *Commentary*

"Generally, a defendant is not entitled to an instruction singling out any of the state's witnesses and highlighting his or her possible motive for testifying falsely. . . . There are, however, two exceptions to this rule: the complaining witness exception and the accomplice exception." *State v. Ortiz*, 252 Conn. 533, 561 (2000). "The complaining witness exception . . . provides that when a complaining witness could himself have been subject to prosecution depending only upon the veracity of his account of [the] particular criminal transaction, the court

should . . . [instruct] the jury in substantial compliance with the defendant's request to charge to determine the credibility of that witness in the light of any motive for testifying falsely and inculcating the accused. . . . [T]here must be evidence . . . to support the defendant's assertion that the complaining witness was the culpable party." (Internal quotation marks omitted.) *Id.* The accomplice exception requires that "where it is warranted by the evidence, it is the *court's duty* to caution the jury to scrutinize carefully the testimony if the jury finds that the witness intentionally assisted in the commission, or if he assisted or aided or abetted in the commission, of the offense with which the defendant is charged." (Emphasis in original; internal quotation marks omitted.) *Id.*, 562. In *State v. Patterson*, 276 Conn. 452 (2005), the Supreme Court recognized a third exception for the testimony of an informant. See *Accomplice Testimony*, Instruction 2.5-2, *Informant Testimony*, Instruction 2.5-3, and *Complaining Witness Testimony*, Instruction 2.5-5.

"[I]t is within the discretion of a trial court to give a cautionary instruction to the jury whenever the court reasonably believes that a witness' testimony may be particularly unreliable because the witness has a special interest in testifying for the state and the witness' motivations may not be adequately exposed through cross-examination or argument by counsel." *State v. Diaz*, 302 Conn. 93, 113 (2011) (rejecting the need for requiring such an instruction in any case where there is evidence that the witness may be particularly unreliable).

### ***Child Witnesses***

A defendant is not entitled to an instruction that a child's testimony is inherently less worthy of belief simply because of the age of the witness. *State v. James*, 211 Conn. 555, 566-71 (1989); General Statutes § 54-86h ("No witness shall be automatically adjudged incompetent to testify because of age."); Code of Evidence § 6-1 ("[E]very person is competent to be a witness."). In *State v. James*, *supra*, the Court recognized the concern, underlying similar decisions in other jurisdictions, that "an instruction [that] singles out the testimony of the child witness for special scrutiny may infringe upon the jury's exclusive role as arbiter of credibility." (Internal quotation marks omitted.) *Id.*, 568. Because such an instruction is "not for the statement of any rule of law but for a cautionary comment upon the evidence," it remains within the discretion of the trial court. *Id.*, 571. A court's denial of a defendant's request for a special child credibility instruction has been consistently upheld when an adequate general credibility instruction has been given. See *State v. Ceballos*, 266 Conn. 364, 423 (2003); *State v. Angell*, 237 Conn. 321, 330 (1996); *State v. Abrahante*, 56 Conn. App. 65, 78-80 (1999); *State v. Nguyen*, 52 Conn. App. 85, 95-97 (1999), *aff'd on other grounds*, 253 Conn. 639 (2000).

### ***Confessions***

"While the preliminary question of admissibility of a confession is for the court, the credibility and weight to be accorded the confession is for the jury." *State v. Vaughan*, 171 Conn. 454, 460-61 (1976); see also *State v. Oliver*, 160 Conn. 85, 95 (1970), *cert. denied*, 402 U.S. 946 (1971) (adhering to the "orthodox rule under which the judge himself solely and finally determines the voluntariness of the confession"). "This rule does not require the court to give a particular instruction to the jury regarding the credibility of the defendant's confession simply because the confession was a substantial part of the evidence." *State v. Corbin*, 260 Conn. 730, 742 (2002) (court's instruction adequately explained the jury's duty to evaluate the weight and credibility of all the evidence).

If the defendant has introduced evidence bearing on the reliability of his or her confession, the court may refer to this evidence during the general credibility instruction. See *State v. Ledbetter*, 263 Conn. 1, 22 (2003) ("The court explained that the jury was required to consider all of the circumstances underlying the defendant's confession in evaluating whether that confession was voluntary and reliable. Moreover, the court expressly apprised the jury of the defendant's claim that the confession was unreliable owing to the defendant's 'age, background and circumstances surrounding the making of her confession,' thereby underscoring those considerations."); see also *State v. Vaughan*, supra, 171 Conn. 454 (concluding that the trial court should have admitted the defendant's proffered expert testimony on his mental capacity at the time of his confession to help the jury determine what weight and credibility to give to the confession); *State v. Fernandez*, 27 Conn. App. 73, 80, cert. denied, 222 Conn. 904 (1992) (distinguishing *Vaughan* on the basis that defendant's proffered testimony was not probative of the reliability of the defendant's confession).

### ***Comparative credibility***

A "comparative credibility" instruction should not be given because it runs the risk of misleading the jury that they can choose the more credible side rather than holding the state to its burden of proving guilt beyond a reasonable doubt. *State v. Whitford*, 260 Conn. 610, 643-49 (2002).

## 2.4-3 Impeachment -- Inconsistent Statements

Revised to November 1, 2008

Evidence has been presented that a witness, <insert name of witness>, made [a] statement[s] outside of court that (is/are) inconsistent with (his/her) trial testimony. You should consider this evidence only as it relates to the credibility of the witness's testimony, not as substantive evidence. In other words, consider such evidence as you would any other evidence of inconsistent conduct in determining the weight to be given to the testimony of the witness in court.

[<Include if appropriate:> The law treats an omission in a prior statement as an inconsistent statement.]

### *Commentary*

Inconsistencies are not limited to diametrically opposed statements, but include omissions and denials of recollection. *State v. Simpson*, 286 Conn. 634, 649 (2008).

The court is not required to give a specific instruction concerning inconsistent statements when the inconsistencies are not substantial and do not relate to a material matter. *State v. Herring*, 55 Conn. App. 522, 526 (1999), cert. denied, 252 Conn. 941 (2000).

If the attorneys have not laid the proper foundation prior to introducing the inconsistent statement, the court may decline to limit the use of the inconsistent statement to impeachment. "Absent a limiting instruction, the jury was free to take the [witness'] prior inconsistent statement as true." (Internal quotation marks omitted.) *State v. Stevenson*, 53 Conn. App. 551, 560 n.8, cert. denied, 250 Conn. 917 (1999); *State v. Correia*, 33 Conn. App. 457, 462, cert. denied, 229 Conn. 911, cert. denied, 513 U.S. 898, 115 S.Ct. 253, 130 L.Ed.2d 174 (1994). See *Tait's Handbook of Connecticut Evidence* § 6.35 (3rd ed. 2001) for a discussion of the foundation necessary to admit inconsistent statements for impeachment purposes.

This instruction should be tailored to the evidence of the case. See *State v. Ramirez*, 94 Conn. App. 812, 823-25 (2006) (the court did not improperly marshal the evidence by pointing out inconsistencies in testimony because it reminded the jury that credibility was up to them).

## 2.4-4 Impeachment -- *Whelan* Rule

Revised to December 1, 2007

In evidence as exhibit [ ] is a prior statement of <identify witness>. To the extent, if at all, you find such statement inconsistent with the witness's trial testimony, you may give such inconsistency the weight to which you feel it is entitled in determining the witness's credibility here in court. You may also use such statement for the truth of its content and find facts from it.

### *Commentary*

Include only if the court has also instructed the jury on the use of inconsistent statements for impeachment purposes (Impeachment -- Inconsistent Statements, Instruction 2.4-3). If the only inconsistent statements in the case have been admitted under *Whelan*, it may not be necessary to instruct on the substantive use of the out-of-court statement because there will be no need to distinguish which statements may be used substantively and which for impeachment only.

See generally *State v. McDougal*, 241 Conn. 502, 507-12 (1997); *State v. Newsome*, 238 Conn. 588, 592-622 (1996).

The prescribed circumstances for the admissibility of prior inconsistent written statements for substantive purposes are that the declarant: 1) signs the statement; 2) has personal knowledge of the facts stated; and 3) testifies at trial and is subject to cross-examination. *State v. Wooten*, 227 Conn. 677, 700 (1993), citing *State v. Whelan*, 200 Conn. 743, cert. denied, 479 U.S. 994, 107 S. Ct. 597, 93 L. Ed. 2d 598 (1986); see also *State v. Woodson*, 227 Conn. 1, 20 (1993). A statement that satisfies the requirements for admissibility under *Whelan* is "presumptively admissible" and "may be excluded as substantive evidence only if the trial court is persuaded, in light of the circumstances under which the statement was made, that the statement is so untrustworthy that its admission into evidence would subvert the fairness of the fact-finding process." *State v. Mukhtaar*, 253 Conn. 280, 306-307 (2000).

A prior tape-recorded statement is also admissible for substantive purposes; *State v. Whelan*, supra, 200 Conn. 754, n.9; however, "the requirement that such statements be signed is unnecessary because the recording of the witness' voice imparts the same measure of reliability as a signature." *State v. Woodson*, supra, 227 Conn. 21; *State v. Portee*, 55 Conn. App. 544, 556-60 (1999), cert. denied, 252 Conn. 920 (2000); *State v. Perry*, 48 Conn. App. 193, 199-200, cert. denied, 244 Conn. 931 (1998).

"The 'personal knowledge' prong of the *Whelan* rule does not require that the declarant have witnessed the commission of the crime that is the subject of the prior inconsistent written or recorded statement." *State v. Grant*, 221 Conn. 93, 99 (1992); *State v. Woodson*, supra, 227 Conn. 22.

## 2.4-5 Impeachment -- Prior Convictions or Misconduct of Witness

Revised to December 1, 2007

The evidence that one of the (state/defense) witnesses, *<insert name of witness>*, *<insert one of the following:>*

- was previously convicted of the crime(s) of *<insert crime(s)>*
- has admitted (stealing / cheating / lying)

is only admissible on the question of the credibility of the witness, that is, the weight that you will give the witness's testimony. The witness's (criminal record / admission of act[s] of (stealing / cheating / lying)) bears only on this witness's credibility.

It is your duty to determine whether this witness is to be believed wholly, or partly, or not at all. You may consider the witness's (prior conviction / act[s] of (stealing / cheating / lying)) in weighing the credibility of this witness and give such weight to those facts that you decide is fair and reasonable in determining the credibility of this witness.

### *Commentary*

See generally General Statutes § 52-145; Code of Evidence § 4-5 (prior misconduct) and § 6-7 (a) (prior convictions).

In *State v. Theriault*, 38 Conn. App. 815, 818-23, cert. denied, 235 Conn. 922 (1995), the Appellate Court ordered a new trial because the trial court had misstated the number of crimes for which evidence had been presented against a witness, who was the only witness linking the defendant to the alleged crime. Because this evidence was highly relevant to the defendant's defense, "the trial court fell short of its duty to refer the jury to the essential facts surrounding the jury instruction regarding use of a witness's prior felony convictions." *Id.*, 823.

## 2.4-6 Failure to Produce Witness

Revised to December 1, 2007

**Note:** This instruction has been deleted.

### *Commentary*

In *State v. Malave*, 250 Conn. 722, 738 (1999), cert. denied, 528 U.S. 1170, 120 S. Ct. 1195, 145 L. Ed. 2d 1099 (2000), the Connecticut Supreme Court revisited the missing witness rule of *Secondino v. New Haven Gas Company*, 147 Conn. 672 (1960), which allowed a jury to draw an adverse inference from the failure of a party to call a particular witness, and concluded that "the time has come to abandon the missing witness rule." Our Appellate Court "has decided that *Malave* applies retroactively." *State v. Saez*, 60 Conn. App. 264, 265 n.1, cert. denied, 255 Conn. 905 (2000); see also *State v. Mitchell*, 59 Conn. App. 523, 526 (2000), cert. denied, 256 Conn. 901 (2001); *State v. Quinones*, 56 Conn. App. 529, 533 (2000).

## 2.4-7 Defendant's Testimony

Revised to December 1, 2007 (modified May 23, 2013)

In this case, the defendant testified. An accused person, having testified, stands before you just like any other witness. (He/she) is entitled to the same considerations and must have (his/her) testimony tested and measured by you by the same factors and standards as you would judge the testimony of any other witness. You have no right to disregard the defendant's testimony or to disbelieve the defendant's testimony merely because (he/she) is accused of a crime. Consider my earlier instructions on the general subject matter of credibility and apply them to the defendant's testimony.

### *Commentary*

Our Supreme Court, in *State v. Medrano*, 308 Conn. 604 (2013), directed trial courts "to refrain from instructing jurors, when a defendant testifies, that they may specifically consider the defendant's interest in the outcome of the case and the importance to him of the outcome of the trial. Instead, we instruct the trial courts to use the general credibility instruction to apply to a criminal defendant who testifies." *Id.*, 631. The Court then cited the above instruction as proper.

## 2.4-8 Impeachment -- Prior Convictions of Defendant

Revised to December 1, 2007

In this case evidence was introduced to show that in <insert year> the defendant was convicted of a felony, which is any crime for which a person may be incarcerated for more than one year. Evidence of the commission of a crime other than the one charged is not admissible to prove the guilt of the defendant in this particular case. The commission of other crimes by this defendant has been admitted into evidence for the sole purpose of affecting (his/her) credibility. You must weigh the testimony and consider it along with all the other evidence in the case. You may consider the convictions of the defendant only as they bear upon (his/her) credibility, and you should determine that credibility upon the same considerations as those given to any other witness.

### *Commentary*

General Statutes § 52-145 (b) provides that "A person's . . . conviction of a crime may be shown for the purpose of affecting his credibility." Under our Supreme Court's interpretation, "a conviction of a crime, whether or not the crime is denominated a felony, is admissible under § 52-145 only if the maximum permissible penalty for the crime may be imprisonment for more than one year." *State v. Braswell*, 194 Conn. 297, 307, cert. denied, 469 U.S. 1112, 105 S. Ct. 793, 83 L. Ed. 2d 786 (1985).

## **2.5 SPECIAL TYPES OF WITNESSES**

**2.5-1 Expert Testimony**

**2.5-2 Accomplice Testimony**

**2.5-3 Informant Testimony**

**2.5-4 Testimony of Police Officials**

**2.5-5 Complaining Witness Testimony**

## 2.5-1 Expert Testimony

Revised to December 1, 2007 (modified June 13, 2008)

In this case certain witnesses have taken the stand, given their qualifications and testified as expert witnesses. A person is qualified to testify as an expert if he or she has special knowledge, skill, experience, training or education sufficient to qualify him or her as an expert on the subject to which the testimony relates. An expert is permitted not only to testify to facts that he or she personally observed but also to state an opinion about certain circumstances. This is allowed because an expert, from experience, research and study, generally has a particular knowledge of the subject of the inquiry and is more capable than a lay person of drawing conclusions from facts and basing an opinion upon them.

[<If hypotheticals were used:><sup>1</sup> An expert witness may state an opinion in response to a hypothetical question, and some experts have done so in this case. A hypothetical question is one in which the witness is asked to assume that certain facts are true and to give an opinion based on those assumptions. The value of the opinion given by an expert in response to a hypothetical question depends upon the relevance, validity and completeness of the facts he or she was asked to assume. The weight that you give to the opinion of an expert will depend on whether you find that the facts assumed were proved and whether the facts relied on in reaching the opinion were complete or whether material facts were omitted or not considered. Like all other evidence, an expert's answer to a hypothetical question may be accepted or rejected, in whole or in part, according to your best judgment.]

Allowing someone to give expert testimony is in no way an endorsement by the court of the testimony or the credentials of the witness.

Such testimony is presented to you to assist you in your deliberations. No such testimony is binding upon you, and you may disregard the testimony either in whole or in part. It is for you to consider the testimony with the other circumstances in the case, and, using your best judgment, determine whether you will give any weight to it, and, if so, what weight you will give to it. The testimony is entitled to such weight as you find the expert's qualifications in his or her field entitle it to receive, and it must be considered by you, but it is not controlling upon your judgment. You are also to consider his or her general credibility in accordance with the instruction on credibility applicable to all witnesses.

In this case you were provided expert testimony by the following witnesses: <list the expert witnesses>.

---

<sup>1</sup> See *State v. Michael G.*, 107 Conn. App. 562, 570, cert. denied, 287 Conn. 924 (2008) (finding error in court's failure to give requested charge on the factual basis of an expert's opinion based on a hypothetical question).

### *Commentary*

A proper instruction on expert testimony directs the jury to evaluate the testimony by the same standards as ordinary witnesses. *State v. Borelli*, 227 Conn. 153, 174 (1993); *State v. Harvey*, 27 Conn. App. 171, 188-89, cert. denied, 222 Conn. 907 (1992).

It is permissible for experts who testify as to the "typical reaction to physical and sexual assault trauma" to answer hypotheticals about whether certain conduct would be consistent with such trauma. *State v. Freeney*, 228 Conn. 582 (1994); *State v. Niemeyer*, 55 Conn. App. 447 (1999), rev'd in part on other grounds, 258 Conn. 510 (2001). This type of testimony does not invade the province of the jury in determining the credibility of the victim. *Niemeyer* specifically rejects the suggestion that the dissenting opinion in *Freeney* in any way requires a more extensive instruction on the issue. See also *State v. Russo*, 38 Conn. Sup. 426 (App. Sess. 1982) (court properly instructed the jury that they must reject the opinion of an expert witness to the extent that it is based on subordinate facts which the jury does not find proved, though the court should specifically delineate these subordinate facts).

See generally General Statutes § 54-86i; Code of Evidence §§ 7-2, 7-3, and 7-4. Section § 7-3 (a) of the Code of Evidence prohibits opinion testimony on an "ultimate issue," unless the fact finder "needs expert assistance in deciding the issue." However, § 7-3 (b), which incorporates the language of General Statutes § 54-86i, limits this exception in criminal cases, prohibiting experts from testifying as to whether the defendant had the requisite mental state for the alleged crime. "The ultimate issue as to whether the defendant was criminally responsible for the crime charged is a matter for the trier of fact alone." *Id.* See also *State v. Finan*, 275 Conn. 60, 66-69 (2005) (the identification of the defendant as one of the perpetrators shown on a security videotape was an ultimate issue).

## 2.5-2 Accomplice Testimony

Revised to December 1, 2007 (modified November 6, 2014)

In weighing the testimony of an accomplice who is a self-confessed criminal, you should consider that fact. It may be that you would not believe a person who has committed a crime as readily as you would believe a person of good character. In weighing the testimony of an accomplice who has not yet been sentenced or whose case has not yet been disposed of or who has not been charged with offenses in which the state has evidence, you should keep in mind that (he/she) may in (his/her) own mind be looking for some favorable treatment in the sentence or disposition of (his/her) own case or hoping not to be arrested. Therefore, (he/she) may have such an interest in the outcome of this case that (his/her) testimony may have been colored by that fact. Therefore, you must look with particular care at the testimony of an accomplice and scrutinize it very carefully before you accept it.

There are many offenses that are of such a character that the only persons capable of giving useful testimony are those who are themselves implicated in the crime. It is for you to decide what credibility you will give to a witness who has admitted (his/her) involvement and criminal wrongdoing, whether you will believe or disbelieve the testimony of a person who by (his/her) own admission has committed or contributed to the crime charged by the state here. Like all other questions of credibility, this is a question you must decide based on all the evidence presented to you.<sup>1</sup>

---

<sup>1</sup> This instruction is derived from *State v. Marra*, 222 Conn. 506, 524-25 (1992). It may be inappropriate to include in the "accomplice testimony" instruction that "[e]ach accomplice's testimony is an admission by him against his own natural interest in not incriminating himself" and therefore may be "evidence of his testimony's reliability." *Id.*

### *Commentary*

Generally, the court should not instruct the jury on the credibility of a particular witness, but the Supreme Court has recognized three exceptions: the complaining witness, an accomplice, and an informant. See *State v. Patterson*, 276 Conn. 452, 470 (2005); *State v. Ortiz*, 252 Conn. 533, 561-62 (2000).

Under the accomplice exception, "where it is warranted by the evidence, it is the *court's duty* to caution the jury to scrutinize carefully the testimony if the jury finds that the witness intentionally assisted in the commission, or if he assisted or aided or abetted in the commission, of the offense with which the defendant is charged." (Emphasis in original; internal quotation marks omitted.) *Id.*, 562; see *State v. Miller*, 150 Conn. App. 667, 677, cert. denied, 312 Conn. 926 (2014) (it was plain error not to give the instruction even though the defendant did not request it or take an exception). A defendant is not entitled to an instruction on accomplice testimony unless there is sufficient evidence that the witness was, in fact, an accomplice. *State v. Stevenson*, 53 Conn. App. 551, 574-77, cert. denied, 250 Conn. 917 (1999); *State v. Sanchez*, 50 Conn. App. 145, 153-59, cert. denied, 247 Conn. 922 (1998).

## 2.5-3 Informant Testimony

Revised to April 23, 2010

A witness testified in this case as an informant. An informant is someone who is currently incarcerated or is awaiting trial for some crime other than the crime involved in this case and who obtains information from the defendant regarding the crime in this case and agrees to testify for the state. You must look with particular care at the testimony of an informant and scrutinize it very carefully before you accept it. You should determine the credibility of that witness in the light of any motive for testifying falsely and inculcating the accused.

In considering the testimony of this witness, you may consider such things as:

- the extent to which the informant's testimony is confirmed by other evidence;
- the specificity of the testimony;
- the extent to which the testimony contains details known only by the perpetrator;
- the extent to which the details of the testimony could be obtained from a source other than the defendant;
- the informant's criminal record;
- any benefits received in exchange for the testimony;
- whether the informant previously has provided reliable or unreliable information; and
- the circumstances under which the informant initially provided the information to the police or the prosecutor, including whether the informant was responding to leading questions.

Like all other questions of credibility, this is a question you must decide based on all the evidence presented to you.

### *Commentary*

Generally, the court should not instruct the jury on the credibility of a particular witness, but the Supreme Court has recognized three exceptions: the complaining witness, an accomplice, and an informant. See *State v. Patterson*, 276 Conn. 452, 470 (2005); *State v. Ortiz*, 252 Conn. 533, 561-62 (2000).

The exception for informant testimony was first recognized in *State v. Patterson*, 276 Conn. 452 (2005). "Because the testimony of an informant who expects to receive a benefit from the state in exchange for his or her cooperation is no less suspect than the testimony of an accomplice who expects leniency from the state, we conclude that the defendant was entitled to an instruction substantially in accord with the one that he had sought." *Id.*, 470. Though originally limited, in *Patterson*, to informants who had actually been promised a benefit in return for his or her testimony, in *State v. Arroyo*, 292 Conn. 558 (2009), the Court expanded it to any informant. "[T]he trial court should give a special credibility instruction to the jury whenever [jailhouse informant] testimony is given, regardless of whether the informant has received an express promise of a benefit." *Id.*, 569.

In *State v. Ebron*, 292 Conn. 656 (2009), and *State v. Boyd*, 295 Conn. 707 (2010), the defendants claimed that they were entitled to an informant instruction because an informing witness had charges pending and may have had motives for testifying falsely about the defendant's statements. In neither case was the claim preserved or reviewed, but the Court

noted, in *State v. Ebron*, supra, 675 n.17, that the opportunity to question the witness about possible motives for testifying and the general credibility instruction were sufficient for such witnesses, and, in *State v. Boyd*, supra, 757-58 n.34, that the *Patterson* rule was applicable only to jailhouse informants.

## 2.5-4 Testimony of Police Officials

Revised to December 1, 2007

Police officials have testified in this case. You must determine the credibility of police officials in the same way and by the same standards as you would evaluate the testimony of any other witness. The testimony of a police official is entitled to no special or exclusive weight merely because it comes from a police official. You should recall (his/her) demeanor on the stand and manner of testifying, and weigh and balance it just as carefully as you would the testimony of any other witness.

You should neither believe nor disbelieve the testimony of a police official just because (he/she) is a police official.

### *Commentary*

It is preferable to give appropriate emphasis to the instruction on police testimony by devoting a separate instruction to that subject. *State v. Banks*, 59 Conn. App. 112, 132- 35, cert. denied, 254 Conn. 950 (2000); *State v. Nieves*, 36 Conn. App. 546, 550, cert. denied, 232 Conn. 916 (1995).

## 2.5-5 Complaining Witness Testimony

New, June 13, 2008 (modified November 6, 2014)

Evidence has been introduced that the complaining witness,<sup>1</sup> <insert name of complainant>, may be culpable in the alleged offense. You must consider the credibility of <insert name of complainant> in light of any motive (he/she) might have for testifying falsely and incriminating the accused, <insert name of defendant>.

In evaluating the testimony of this witness, you should consider (his/her) appearance and demeanor as a witness, the reasons given for (his/her) coming forward and telling (his/her) story to the authorities, and whether any motive has appeared or any reason is apparent why (he/she) would accuse the defendant.

You must consider and compare (his/her) testimony with all the other testimony and evidence in the case. It is up to you to determine whether to believe this witness. Like all other questions of credibility, this is a question you must decide based on all the evidence presented to you.

---

<sup>1</sup> "A complaining witness or prosecuting witness is the person who was chiefly injured, in person or property, by the act constituting the alleged crime . . . and who instigates [causes the instigation of] the prosecution." *State v. Sinchak*, 47 Conn. App. 134, 144 n.5 (1997), quoting Black's Law Dictionary (6th Ed. 1990).

### Commentary

Generally, the court should not instruct the jury on the credibility of a particular witness, but the Supreme Court has recognized three exceptions: the complaining witness, an accomplice, and an informant. See *State v. Patterson*, 276 Conn. 452, 470 (2005); *State v. Ortiz*, 252 Conn. 533, 561-62 (2000).

The complaining witness exception was first discussed in *State v. Cooper*, 182 Conn. 207 (1980), in which the Court said "[s]ince the complaining witness could himself have been subject to prosecution depending only upon the veracity of his account of this particular criminal transaction, the court should have instructed the jury in substantial compliance with the defendant's request to charge to determine the credibility of that witness in the light of any motive for testifying falsely and inculcating the accused. We emphasize, however, that in order for the request to be applicable to the issues in the case, there must be evidence, as there was here, to support the defendant's assertion that the complaining witness was the culpable party." *Id.*, 212. See also *State v. Baltas*, 311 Conn. 786, 818-22 (2014) (evidence of witness's possible participation in the crime was sufficient to justify an instruction on her motive to testify falsely); *State v. Keiser*, 196 Conn. 122, 133 (1985) (insufficient evidence that witness was a culpable party).

"To be sufficient to implicate culpability, the evidence must directly connect a complaining witness to the crime with which the defendant is charged. . . . It is not sufficient to raise a mere suspicion that the witness may have committed the crime." *State v. Sinchak*, 47 Conn. App. 134, 144 (1997). "It is not enough to show that the party had a motive to commit

the crime . . . nor is it enough to raise a mere suspicion that he may have committed the crime"  
(Citations omitted.) *State v. Byrd*, 34 Conn. App. 368, 373 (1994).

## **2.6 SPECIAL TYPES OF EVIDENCE**

- 2.6-1 Proximate Cause**
- 2.6-2 Motive**
- 2.6-3 Consciousness of Guilt**
- 2.6-4 Identification of Defendant**
- 2.6-5 Other Misconduct of Defendant**
- 2.6-6 Multiple Defendants**
- 2.6-7 Judicial Notice**
- 2.6-8 Evidence Admitted for a Limited Purpose**
- 2.6-9 Stipulations**
- 2.6-10 Third Party Culpability**
- 2.6-11 Multiple Charges and/or Informations**
- 2.6-12 Medical Treatment Evidence**
- 2.6-13 Other Misconduct - Criminal Sexual Behavior**
- 2.6-14 Adequacy of Police Investigation**

## 2.6-1 Proximate Cause

Revised to December 1, 2007

The state must prove beyond a reasonable doubt that the defendant proximately caused the (death of / injuries to) *<insert name of decedent / person injured>*. Proximate cause does not necessarily mean the last act or cause, or the act in point of time nearest to the (death / injuries). The concept of proximate cause incorporates the principle that an accused may be charged with a criminal offense even though (his/her) acts were not the immediate cause of the (death / injuries).

An act or omission to act is a proximate cause of the (death / injuries) when it substantially and materially contributes, in a natural and continuous sequence, unbroken by an efficient, intervening cause, to the (death / injuries). It is a cause without which the (death / injuries) would not have occurred. It is a predominating cause, a substantial factor from which the (death / injuries) follow[s] as a natural, direct and immediate consequence.<sup>1</sup>

[*<Include if appropriate:>* It does not matter whether the particular kind of harm that results from the defendant's act be intended by the defendant.]<sup>2</sup> When the result is a foreseeable and natural result of the defendant's conduct, the law considers the chain of legal causation unbroken and holds the defendant criminally responsible.

[*<If defendant claims an intervening cause:>*<sup>3</sup>

The defendant claims that (his/her) conduct was not the proximate cause of *<insert name of decedent or complainant>*'s (death / injuries) because there was an intervening cause that was the cause of the (death / injuries). The doctrine of intervening cause applies in a situation in which the defendant's conduct is a cause and factor of the (death / injuries), that is, *<insert name of decedent or complainant>* would not have (died / been injured) but for the defendant's conduct, but nonetheless something else subsequently occurs -- which may be an act of the (decedent / person injured), the act of some other person, or some nonhuman force -- that does more than supply a concurring or contributing cause of the injury. An intervening cause is unforeseeable and sufficiently powerful in its effect that it serves to relieve the defendant of criminal responsibility for (his/her) conduct. In such a case, the defendant's conduct is not the proximate cause of *<insert name of decedent or complainant>*'s (death / injuries).

The doctrine of intervening cause serves as a dividing line between two closely related factual situations: 1) when two or more acts or forces, one of which was set in motion by the defendant, combine to cause a person's (death / injuries), the doctrine of intervening cause will not relieve the defendant of criminal responsibility, and 2) when an unforeseeable act and force intervenes in such a powerful way as to become the proximate cause of the (death / injuries), the doctrine of intervening cause will relieve a defendant from criminal responsibility, even though his or her conduct contributed, in fact, to the (death / injuries).

In other words, when more than one factor contributes, in a chain of events, to cause (death / injuries), in order to be the proximate cause of that (death / injury), the defendant's conduct must have been a cause that necessarily set in operation the factors that accomplished the (death / injury). When the other circumstance constitutes a concurring or contributing cause of the

(death / injuries), the defendant will be held responsible. When the other circumstance constitutes an intervening cause of the (death / injuries), the defendant will not be held responsible.

This is a question of fact for you, as jurors, to determine. Keep in mind, however, that the defendant does not have any burden to prove an intervening cause. The burden rests on the state to prove that the defendant's conduct was the proximate cause of <insert name of decedent or complainant>'s (death / injuries).]

[<If decedent had a pre-existing medical condition:><sup>4</sup>

The defendant's criminal liability is not lessened because of a pre-existing medical condition of <insert name of decedent>. It is sufficient that the defendant's conduct set in motion a chain of events that ultimately produced the death. If the defendant's conduct inflicted upon <insert name of decedent> physical or emotional injury or stress or trauma that was in this sense the proximate cause of (his/her) death, then the defendant's conduct, under the circumstances, caused the death, even though <insert name of decedent> had already been enfeebled by poor physical condition and the physical or emotional stress or trauma were not the only cause of (his/her) death. This is so even though it is probable that a person in sound physical condition would not have died from the effects of the defendant's conduct. It does not matter that the defendant's conduct may have only hastened the death, or that <insert name of decedent> would have died soon thereafter from another cause or causes. As long as (his/her) admittedly and recognizable predisposition of <describe pre-existing condition> was not the only substantial factor in bringing on (his/her) death, that condition does not operate to prevent the defendant's responsibility for (his/her) conduct having caused <insert name of decedent>'s death. If the defendant's unlawful conduct set in motion factors that led to <insert name of decedent>'s death, such conduct establishes the defendant's guilt even though (his/her) conduct or the factors (he/she) set in motion were not the only cause of <insert name of decedent>'s death.]

---

<sup>1</sup> *State v. Griffin*, 251 Conn. 671, 712-13 n. 17 (1999).

<sup>2</sup> Use only when the defendant may have intended one type of harm but caused another. For example, when an accused, "with the intent to cause death by shooting, shoots the victim, who, as a result, falls from a rooftop and is killed by the fall rather than the bullet. That would be a particular kind of harm not intended by the accused. It nevertheless would sustain a charge of murder if the accused intended to cause death and the fall was the direct result of the action taken to effectuate that intent." *State v. Boles*, 223 Conn. 535, 542 n.5 (1992).

<sup>3</sup> See *State v. Munoz*, 233 Conn. 106, 124 (1995), and *State v. Hannon*, 56 Conn. App. 581, 586-87 (2000), cert. denied, 274 Conn. 911 (2005).

<sup>4</sup> Use if the defendant is claiming that a pre-existing medical condition of the decedent was an intervening cause. See *State v. Spates*, 176 Conn. 227, 235 n.5 (1978) (defendant's actions during a robbery precipitated the victim's heart attack which led to his death); *State v. Dorans*, 261 Conn. 730, 736-44 (2002) (victim had a pre-existing nervous system disorder). Do not use the language that "[a] defendant takes a victim as he finds him." *Id.*, 261 Conn. 744 n.16.

### ***Commentary***

When causation is an element of the crime, but not at issue, the first three paragraphs of this instruction should be given. See *State v. Collins*, 100 Conn. App. 833, 848, cert. denied, 284 Conn. 916 (2007). Whenever the facts and evidence presented require that causation be determined by the jury, the additional sections should be included as appropriate.

For discussions of the law of proximate cause, see *State v. Munoz*, 233 Conn. 106, 114-27 (1995); *State v. Wassil*, 233 Conn. 174, 181-82 (1995); *State v. Leroy*, 232 Conn. 1 (1995); *State v. Boles*, 223 Conn. 535, 540-42 (1992); *State v. Spates*, 176 Conn. 227, 233-35 (1978), cert. denied, 440 U.S. 922, 99 S. Ct. 1248, 59 L. Ed. 2d 475 (1979).

"[A] jury instruction with respect to proximate cause must contain, at a minimum, the following elements: (1) an indication that the defendant's conduct must contribute substantially and materially, in a direct manner, to the victim's injuries; and (2) an indication that the defendant's conduct cannot have been superseded by an efficient, intervening cause that produced the injuries." *State v. Leroy*, supra, 232 Conn. 13; see also *State v. Griffin*, 251 Conn. 671, 712-16 (1999); *State v. Hannon*, 56 Conn. App. 581, 591 (2000), cert. denied, 274 Conn. 911 (2005).

### ***Intervening cause***

For a discussion of the doctrine of efficient, intervening cause, see *State v. Munoz*, 233 Conn. 106, 124-27 (1995). The court in *Munoz* also stated that a third party's conduct in inflicting an additional stab wound might be so significant that it amounts to an efficient, intervening cause. *Id.*, 122. The court has now disavowed this statement because it is contrary to the doctrine of proximate cause in criminal cases that every person be held responsible for the consequences of his or her acts, regardless of other causes that contributed to produce the result. *State v. Shabazz*, 246 Conn. 746, 754 n.5 (1998), cert. denied, 525 U.S. 1179, 119 S. Ct. 1116, 143 L. Ed. 2d 111 (1999). The court has also emphasized that *Munoz* "rested primarily on the fact that the jury reasonably could have inferred from the evidence that the intervening criminal conduct was the *sole* proximate cause of the victim's death." (Emphasis in original.) *Id.*, 755.

An instruction regarding an efficient, intervening cause is not always required. *State v. Munoz*, supra, 233 Conn. 121 n.8. The need for such an instruction "arises in those cases in which the evidence could support a finding by the jury that the defendant's conduct was overcome by an efficient, intervening cause, or in which the evidence regarding proximate causation was such that, based on the doctrine of efficient, intervening cause, the jury could have a reasonable doubt about the defendant's guilt. Thus, in the general run of cases, in which the evidence is susceptible of a finding of only one cause of harm contemplated by the statute, a statement in the jury instruction referring to an efficient, intervening cause might well be unnecessary." *Id.* See also *State v. Delgado*, 50 Conn. App. 159, 173 (1998) (insufficient evidence that actions of emergency medical personnel may have been a sufficient intervening cause); *State v. Guess*, 44 Conn. App. 790, 798 (1997), aff'd, 244 Conn. 761 (1998) (victim's family's decision to terminate life support was not intervening cause).

### ***Inconsistent with accessorial liability***

When two parties act in concert, it is immaterial which of the two accomplices inflict the fatal blow. If one of them is charged only as an accomplice, that person cannot claim that the acts of the principal were an intervening cause relieving him or her of liability. *State v. Fruean*,

63 Conn. App. 466, 475, cert. denied, 257 Conn. 908 (2001) (court properly refused defendant's request to instruct on proximate cause and intervening cause).

## 2.6-2 Motive

Revised to December 1, 2007

The law does not require that the state, in a criminal case, prove a motive, because it is not an element of the crime. It is not necessary for the state to prove what reason the defendant may have had for committing the crime charged.

Because crimes are generally committed for some motive, evidence of a motive may tend to prove the guilt of a defendant. In the same manner, if there appears no adequate motive on the part of the defendant to commit the crime, that may tend to raise a reasonable doubt as to the guilt of the defendant. *<Identify the evidence introduced as to motive.>*

If the existence of a motive can be reasonably inferred, that may tend to prove the defendant's guilt. If no motive can be inferred, it may or may not raise a reasonable doubt as to the guilt of the defendant. If the absence of a motive does not raise a reasonable doubt that the defendant is guilty, then the fact that the state has not proved what the defendant's motive was does not prevent you from returning a verdict of guilty.

### *Commentary*

"While evidence of motive does not establish an element of the crime charged . . . such evidence is both desirable and important. . . . It strengthens the state's case when an adequate motive can be shown. . . . Evidence tending to show the existence or nonexistence of motive often forms an important factor in the inquiry as to the guilt or innocence of the defendant. . . . This factor is to be weighed by the jury along with the other evidence in the case. . . . The role motive plays in any particular case necessarily varies with the strength of the other evidence in the case. The other evidence may be such as to justify a conviction without any motive being shown. It may be so weak that without a disclosed motive the guilt of the accused would be clouded by a reasonable doubt." (Internal quotation marks omitted.) *State v. Wargo*, supra, 255 Conn. 140 n.24.

"[I]f the evidence warrants it and if an accurate and timely request to charge is made, the trial court must instruct the jury that a lack of evidence on motive may tend to raise a reasonable doubt." *State v. Pinnock*, 220 Conn. 765, 790 (1992). A proper instruction informs the jury that: "(1) motive is not an element of the offense, and the state is not required to prove or show motive; (2) an absence of evidence of motive may tend to raise a reasonable doubt; and (3) even a total lack of evidence of motive would not necessarily raise a reasonable doubt as to the guilt of the defendant so long as there is other evidence produced that is sufficient to prove guilt beyond a reasonable doubt." *Id.*, 792. See also *State v. Malave*, 47 Conn. App. 597, 611-12 (1998), *aff'd*, 250 Conn. 722 (1999), *cert. denied*, 528 U.S. 1170, 120 S. Ct. 1195, 145 L. Ed. 2d 1099 (2000) (trial court properly refused to instruct the jury as to the defendant's lack of motive to commit the crimes, evidence having been introduced from which the jury could have inferred that there was enmity between the defendant and one of the victims).

If evidence of prior misconduct is admitted for the purpose of showing motive, the court should also give an instruction limiting the jury's use of the evidence. See *State v. Feliciano*, 256 Conn. 429, 451 n.11 (2001), in which the court admitted evidence of the defendant's robbery in support of his drug habit for the limited purpose of demonstrating that the defendant had a

motive for the robbery that led to the victim's murder. See Evidence Admitted for a Limited Purpose, Instruction 2.6-8.

## 2.6-3 Consciousness of Guilt

Revised to December 1, 2007 (modified November 1, 2008)

In any criminal trial it is permissible for the state to show that conduct or statements made by a defendant after the time of the alleged offense may have been influenced by the criminal act; that is, the conduct or statements show a consciousness of guilt.<sup>1</sup>

[<Include if appropriate:> For example,

- flight, when unexplained, may indicate consciousness of guilt if the facts and the circumstances support it.
- a person's possession of or attempt to conceal anything acquired through the crime may tend to show a consciousness of guilt.
- a person's false statements as to (his/her) whereabouts at the time of the offense may tend to show a consciousness of guilt.]

Such (acts / statements) do not, however, raise a presumption of guilt.<sup>2</sup> If you find the evidence proved and also find that the (acts / statements) were influenced by the criminal act and not by any other reason, you may, but are not required to, infer from this evidence that the defendant was acting from a guilty conscience.<sup>3</sup>

The state claims that the following conduct is evidence of consciousness of guilt: <describe specific evidence>.

It is up to you as judges of the facts to decide whether the defendant's (acts / statements), if proved, reflect a consciousness of guilt and to consider such in your deliberations in conformity with these instructions.

---

<sup>1</sup> It is improper to refer to a "guilty connection" as a synonym for "consciousness of guilt." *State v. Francis*, 228 Conn. 118, 133 n.16 (1993); *State v. Murdick*, 23 Conn. App. 692, 702-703 & 703 n.6, cert. denied, 217 Conn. 809 (1991).

<sup>2</sup> See *State v. Lugo*, 266 Conn. 674, 697 (2003).

<sup>3</sup> See *State v. Hernandez*, 91 Conn. App. 169, 177, cert. denied, 276 Conn. 912 (2005) (court improperly instructed that statements when shown to be false are circumstantial evidence of consciousness of guilt rather than that they are circumstantial evidence from which may be inferred a consciousness of guilt).

### *Commentary*

"Once the evidence is admitted, if it is sufficient for a jury to infer from it that the defendant had a consciousness of guilt, it is proper for the court to instruct the jury as to how it can use that evidence. It is then for the jury to consider any ambiguity." (Internal quotation marks omitted.) *State v. Middlebrook*, 51 Conn. App. 711, 720-21, cert. denied, 248 Conn. 910 (1999). "Whether particular conduct is an index of guilt depends on the particular

circumstances." *State v. Jones*, 234 Conn. 324, 356 (1995) (evidence that defendant objected to physical tests on religious grounds was not probative of consciousness of guilt); see also *State v. Hinds*, 86 Conn. App. 557, 565-67 (2004), cert. denied, 273 Conn. 915 (2005) (false statements to the police could not support inference that they were made in an effort to exculpate the defendant). For an opinion critical of giving this instruction, see *United States v. Mundy*, 539 F.3d 154 (2nd Cir. 2008).

A consciousness of guilt instruction applies only to the conduct of the defendant, not that of a witness. *State v. Stavrakis*, 88 Conn. App. 371, 386 (2005), cert. denied, 273 Conn. 939 (2006) (defendant wanted victim's statements to show consciousness of guilt that the victim had been the initial aggressor).

### ***Types of consciousness of guilt***

The most commonly offered types of consciousness of guilt are flight, false statements, or concealment or fabrication of evidence. The instruction should be tailored to the evidence of the case, but the court should be careful not to improperly marshal the evidence. See *State v. Hernandez*, 218 Conn. 458, 461-66 (1991) (court presented a partisan view of the evidence which discounted the defendant's evidence and his theory of defense).

On flight, see *State v. Kelly*, 256 Conn. 23, 53 n.17 (2001); *State v. Scott*, 270 Conn. 92, 104 n.7 (2004), cert. denied, 544 U.S. 987, 125 S.Ct. 1861, 161 L.Ed.2d 746 (2005); *State v. Groomes*, 232 Conn. 455, 473 n.14 (1995). An instruction that does not include innocent explanations, even if presented by defendant, is not erroneous, but it is within the court's discretion to include reference to a possible innocent explanation that is supported by the evidence. *State v. Hines*, 243 Conn. 796, 811-816 (1998); *State v. Freeney*, 228 Conn. 582, 593-94 (1994). See also *State v. Freeney*, supra, 228 Conn. 602-10 (*Berdon, J.*, dissenting) (proposing an even-handed approach to flight instructions).

On false statements, see *State v. Marshall*, 45 Conn. App. 66, 80 n.9 (1997), rev'd on other grounds, 246 Conn. 799 (1998) (statements meant to inculpate others); *State v. Graham*, 33 Conn. App. 432, 441 n.3, cert. denied, 229 Conn. 906 (1994) (false testimony at trial).

On concealment or fabrication of evidence, see *State v. Coltherst*, 263 Conn. 478, 503-507 (2003) (defendant wrote letter offering money in exchange for an alibi).

### ***Flight in relation to the duty to retreat***

"The section of the statute that pertains to the duty to retreat merely allows the state to rebut a claim of self-defense by showing that the defendant could have retreated safely *before* using deadly force. It does not follow that a defendant is statutorily or constitutionally entitled to use evidence of retreat *after* using deadly force to bolster a claim of self-defense without permitting the jury to consider other possible reasons for the flight. As in other contexts, evidence of flight after using deadly force inherently is ambiguous and does not logically compel a conclusion that the reason for the flight was self-defense. Although it may be prudent, as a general rule, for the trial court to use greater caution in giving a consciousness of guilt instruction when a defendant has claimed self-defense, we do not believe that such instructions [on consciousness of guilt] inherently are unconstitutional." (Emphasis in original.) *State v. Luster*, 279 Conn. 414, 424 (2006).

***Consciousness of innocence***

The court is not required to give an instruction on "consciousness of innocence" because there is no support in the law for such a request. *State v. Holley*, 90 Conn. App. 350, 364-66, cert. denied, 275 Conn. 929 (2005); *State v. Otero*, 49 Conn. App. 459, 469-70, cert. denied, 247 Conn. 910 (1998) (defendant not entitled to instruction on lack of flight or voluntary surrender to show consciousness of innocence).

## 2.6-4 Identification of Defendant

Revised to June 12, 2015

The state has the burden of proving beyond a reasonable doubt that the defendant was the perpetrator of the crime.

[<Include if appropriate:> The defendant denies that (he/she) is the person who was involved in the commission of the alleged offense(s).]

In this case, the state has presented evidence that an eyewitness identified the defendant in connection with the crime charged. Identification is a question of fact for you to decide, taking into consideration all the evidence that you have seen and heard in the course of the trial.

The identification of the defendant by a single witness as the one involved in the commission of a crime is, in and of itself, sufficient to justify a conviction of such a person, provided, of course, that you are satisfied beyond a reasonable doubt of the identity of the defendant as the one who committed the crime. In arriving at a determination as to the matter of identification, you should consider all the facts and circumstances that existed at the time of the observation of the perpetrator by each witness. In this regard, the reliability of each witness is of paramount importance, since identification testimony is an expression of belief or impression by the witness. Its value depends upon the opportunity and ability of the witness to observe the perpetrator at the time of the event and to make an accurate identification later. It is for you to decide how much weight to place upon such testimony.

### **Capacity and opportunity of the witness to observe the perpetrator<sup>1</sup>**

In appraising the identification of the defendant as the perpetrator by any witness, you should take into account whether the witness had adequate opportunity and ability to observe the perpetrator on the date in question. This will be affected by such considerations as the length of time available to make the observation; the distance between the witness and the perpetrator; the lighting conditions at the time of the offense; whether the witness had known or seen the person in the past; the history, if any, between them, including any degree of animosity; and whether anything distracted the attention of the witness during the incident. You should also consider the witness's physical and emotional condition at the time of the incident, and the witness's powers of observation in general.

[<Include if appropriate:> In general, a witness bases any identification on (his/her) sense of sight. But this is not necessarily so. An identification based on other senses, such as smell or the sound of the perpetrator's voice is just as valid.]

### **Circumstances of identification**

Furthermore, you should consider the length of time that elapsed between the occurrence of the crime and the identification of the defendant by the witness. You may also consider the strength of the identification, including the witness's degree of certainty. Certainty, however, does not mean accuracy. You should also take into account the circumstances under which the witness first viewed and identified the defendant, the suggestibility, if any, of the procedure used in that

viewing, any physical descriptions that the witness may have given to the police, and all the other factors which you find relating to reliability or lack of reliability of the identification of the defendant.

[<Include if appropriate:> You may also take into account that an identification made by picking the defendant out of a group of similar individuals is generally more reliable than one which results from the presentation of the defendant alone to the witness.]

[<Include if appropriate:><sup>2</sup> The identification of the defendant by the witness, <insert name of witness>, was the result of an identification procedure in which the individual conducting the procedure either indicated to the witness that a suspect was present in the procedure or failed to warn the witness that the perpetrator may or may not be in the procedure.

Indicating to a witness that a suspect is present in an identification procedure or failing to warn the witness that the perpetrator may or may not be in the procedure may increase the likelihood that the witness will select one of the individuals in the procedure even when the perpetrator is not present. Thus, such action on the part of the procedure administrator may increase the probability of a misidentification.

This information is not intended to direct you to give more or less weight to the eyewitness identification evidence offered by the state. It is your duty to determine what weight to give to that evidence. You may, however, take into account this information, as just explained to you, in making that determination.]

### **Consistency of identification**

You may consider whether the witness at any time either failed to identify the defendant or made an identification that was inconsistent with the identification testified to at trial.

### **Credibility of witness**

You will subject the testimony of any identification witness to the same standards of credibility that apply to all the witness. When assessing the credibility of the testimony as it relates to the issue of identification, keep in mind that it is not sufficient that the witness be free from doubt as to the correctness of the identification of the defendant; rather, you must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may find (him/her) guilty on any charge.

[<If there has been expert testimony of eyewitness identification:> You heard the testimony of <insert name of witness> on the (psychological / sociological / statistical) research on eyewitness identification. You should evaluate that testimony as I have instructed you on expert testimony.]<sup>3</sup>

### **Conclusion**

In short, you must consider the totality of the circumstances affecting the identification. Remember, the state has the burden to not only prove every element of the crime but also the identity of the defendant as the perpetrator of the crime. You must be satisfied beyond a reasonable doubt of the identity of the defendant as the one who committed the crime, or you

must find the defendant not guilty. If you have a reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty.

---

<sup>1</sup> In *United States v. Telfaire*, 469 F.2d 552 (D.C. Cir. 1972), the court proposed a model instruction which has been followed substantially by many jurisdictions. While Connecticut courts "have used the model *Telfaire* instruction as an aid in determining the adequacy of an instruction on eyewitness identification . . . we have never required that it be given verbatim in order to ensure that the jury is properly guided." (Citations omitted; internal quotation marks omitted.) *State v. Tatum*, 219 Conn. 721, 733-34 (1991). The *Telfaire* instruction has four components: 1) the capacity and opportunity of the witness to observe the offender; 2) the circumstances surrounding the subsequent identification; 3) whether the witness at any time either failed to identify the defendant or made an identification inconsistent with that made at trial; and 4) the credibility of the witness making the identification. This instruction complies with the substantive requirements of *Telfaire* in all respects, but should be modified according to the specific facts of the case and the particular claims of the defendant regarding the identification(s).

<sup>2</sup> *State v. Ledbetter*, 275 Conn. 534 (2005), requires specific instructions on identification procedures under certain circumstances. See discussion of *Ledbetter* below.

<sup>3</sup> See *State v. Guilbert*, 306 Conn. 218 (2012), for a thorough discussion of allowing expert testimony on eyewitness identification.

### ***Commentary***

A defendant who raises the defense of mistaken identity is entitled to an instruction. *State v. Whipper*, 258 Conn. 229, 285 (2001), overruled on other grounds, *State v. Cruz*, 269 Conn. 97 (2004) ("trial court properly charged the jury that the state had to prove beyond a reasonable doubt that the defendant had committed the offenses charged and that the jury should consider the defendant's defense of mistaken identity and the evidence he had submitted in support of that defense."); *State v. Dubose*, 75 Conn. App. 163, 172-73, cert. denied, 263 Conn. 909 (2002) (reviewing nearly identical instruction).

"[A] trial court's refusal to give any special instruction whatsoever on the dangers inherent in eyewitness identification constitutes reversible error where the conviction of the defendant turns upon the testimony of eyewitnesses who were uncertain, unclear or inconsistent." (Internal quotation marks omitted.) *State v. Tatum*, supra, 219 Conn. 733 n.18; see also *State v. Cerilli*, 222 Conn. 556, 567 (1992); *State v. Taft*, 57 Conn. App. 19, 30 n.8 (2000), aff'd by 258 Conn. 412 (2001); *State v. Askew*, 44 Conn. App. 280, 287-90 (1997), rev'd on other grounds, 245 Conn. 351 (1998); *State v. Collins*, 38 Conn. App. 247, 254 n.6 (1995).

The fact that the defendant and the eyewitness are of different races does not entitle the defendant to a special instruction on cross-racial identification. *State v. Cerelli*, supra, 222 Conn. 571-72; *State v. Wiggins*, 74 Conn. App. 703, 708 (2003) (defendant could have raised the issue of the reliability of the identification in cross-examination).

***Overly suggestive identification procedures -- the Ledbetter instruction***

In a challenge to the standard identification procedures employed by law enforcement, the Supreme Court, in *State v. Ledbetter*, 275 Conn. 534 (2005), declined to adopt a per se rule that juries should be instructed that such identifications have a high potential for unreliability. It did conclude, however, that "an indication by the identification procedure administrator that a suspect is present in the procedure is an unnecessarily suggestive element of the process that should be considered by the trial court in its analysis. . . . [The Court] also [agreed] that the trial court, as part of its analysis, should consider whether the identification procedure administrator instructed the witness that the perpetrator may or may not be present in the procedure and should take into account the results of the research studies concerning that instruction." (Citations omitted.) *Id.*, 574-75. Consequently, the Court held that trial courts should instruct the jury as to the possible risk of misidentification "in those cases where the identification procedure administrator fails to provide such a warning, unless no significant risk of misidentification exists." *Id.*, 575.

Specifically, the court must give the instruction in those cases in which:

- 1) the state has offered eyewitness identification evidence;
- 2) that evidence resulted from an identification procedure; and
- 3) the administrator of that procedure failed to instruct the witness that the perpetrator may or may not be present in the procedure.

Note that the court "decline[d] to delineate all of the potential factual variations that might result in the trial court finding no significant risk of misidentification, [but noted] that one example would be where the defendant was known by the witness before the incident occurred. The trial court should make its determination of whether a significant risk of misidentification exists on the basis of the totality of the circumstances." *Id.*, 579 n.26.

## 2.6-5 Other Misconduct of Defendant

Revised to May 10, 2012

**Note:** When evidence of the other misconduct is being offered to show that the defendant engaged in aberrant and compulsive criminal sexual behavior, see Other Misconduct - Criminal Sexual Behavior, **Instruction 2.6-13**.

The state has offered evidence of other acts of misconduct of the defendant. This is not being admitted to prove the bad character, propensity or criminal tendencies of the defendant. Such evidence is being admitted solely to show or establish: *<insert one or more of the following:>*<sup>1</sup>

- the defendant's intent.
- the identity of the person who committed the crimes alleged.
- malice on the part of the defendant against the (complainant/decedent).
- a motive for the commission of the crimes alleged.
- that the commission of the crimes follows a common plan or scheme.<sup>2</sup>
- absence of mistake or accident on the part of the defendant.
- the defendant's knowledge.
- a system of criminal activity being engaged in by the defendant.
- an element of the crime of *<insert name of offense>*.
- the complete story as presented by the prosecution.

You may not consider such evidence as establishing a predisposition on the part of the defendant to commit any of the crimes charged or to demonstrate a criminal propensity.

You may consider such evidence if you believe it and further find that it logically, rationally and conclusively supports the issue[s] for which it is being offered by the state, but only as it may bear on the issue[s] of *<describe purpose of admitting evidence>*.

On the other hand, if you do not believe such evidence, or even if you do, if you find that it does not logically, rationally and conclusively support the issue[s] for which it is being offered by the state, namely *<describe purpose of admitting evidence>*, then you may not consider that testimony for any purpose.

You may not consider evidence of other misconduct of the defendant for any purpose other than the one[s] I've just told you, because it may predispose your mind uncritically to believe that the defendant may be guilty of the offense here charged merely because of the alleged other misconduct. For this reason, you may consider this evidence only on the issue[s] of *<describe purpose of admitting evidence>*, and for no other purpose.

---

<sup>1</sup> See Code of Evidence § 4-5 (c). The purposes listed are intended to be illustrative rather than exhaustive. See Commentary to § 4-5.

<sup>2</sup> See *State v. Randolph*, 284 Conn. 328 (2007), for a discussion of the limitations of the common plan or scheme exception in proving identity.

### *Commentary*

The acts of misconduct may have been prior or subsequent to the charged offense. *State v. Bunker*, 89 Conn. App. 605, 631-32 (2005), appeal dismissed, 280 Conn. 512 (2006).

This instruction may be used when the misconduct is a charged or uncharged offense, but must be modified accordingly. It should be narrowly tailored to refer only to the specific purpose for which the evidence was presented. See *State v. Jones*, 205 Conn. 638 (1987) ("[T]he instructions focused the jury's attention on the precise factors that the trial court had considered when it made its threshold finding of admissibility."). "[W]hen evidence of the defendant's other crimes is admitted for a limited purpose, there is the danger that the jury nevertheless will misuse the evidence and infer improperly that the defendant committed the charged offense because he had committed other crimes in the past. Accordingly, in order to vitiate this potential prejudice, we generally have required the trial court, sua sponte if necessary, to instruct the jury as to the limited purpose for which such evidence is admitted and for which it is to be considered." (Internal quotation marks omitted.) *State v. Ouellette*, 190 Conn. 84, 96 (1983); *State v. Huckabee*, 41 Conn. App. 565, 575, cert. denied, 239 Conn. 903 (1996) (given the numerous incidents of prior misconduct presented, the defendant was entitled to a limiting instruction). However, in the absence of an objection to the admission of the evidence or a request to instruct, the court is not required sua sponte to give a limiting instruction. *State v. Cator*, 256 Conn. 785, 800-802 (2001).

A cautionary instruction may be given before the testimony or directly after in addition to including it in the court's final charge. See *State v. William C.*, 103 Conn. App. 508, 516-20, cert. denied, 284 Conn. 928 (2007); *State v. Torres*, 57 Conn. App. 614, 620 n.3, n.4, n.5, cert. denied, 253 Conn. 927 (2000).

"[I]t is not necessary that a trial court instruct the jury that it must find, by a preponderance of the evidence, that prior acts of misconduct actually occurred at the hands of the defendant. Instead, a jury may consider prior misconduct evidence for the proper purpose for which it is admitted if there is evidence from which the jury reasonably could conclude that the defendant actually committed the misconduct." *State v. Cutler*, 293 Conn. 303, 322 (2009).

## 2.6-6 Multiple Defendants

Revised to December 1, 2007

There are *<insert number of defendants>* defendants on trial here. Although the defendants are being tried together, you must consider the case against each separately. That is, your findings in one case do not in themselves establish a basis for similar findings in the other case[s]. Each defendant is to be considered as if (he/she) were on trial alone for the offense or offenses for which (he/she) stands charged. You will be required, therefore, to render a verdict upon each defendant separately. The charges against each defendant are contained in different counts. Each count charges a separate crime joined for the convenience of the trial in one information. You must consider each count separately and decide whether or not the state has proved each of the elements of that crime beyond a reasonable doubt.

I remind you that during the course of the trial certain evidence of *<describe evidence>* was admitted for you to consider in the case of *<insert name of defendant>*, but you were instructed not to consider this particular evidence in connection with the charges against the other defendant[s]. Your verdict for each defendant must be based solely on the evidence that was admitted for your consideration with respect to that particular defendant. Where evidence was admitted with respect to one defendant and not the other[s], you must consider it only with regard to the appropriate defendant and disregard it as to the other[s]. Remember that you will be required to return a separate verdict for each count.

### *Commentary*

See generally *State v. Booth*, 250 Conn. 611, 632-33 (1999), cert. denied, 529 U.S. 106, 120 S. Ct. 156, 146 L. Ed. 2d 47 (2000) (trial court instructed the jury to "decide the case against each of these three defendants separately").

If there are more than two defendants, a longer instruction may be necessary. See *State v. Henry*, 72 Conn. App. 640, cert. denied, 262 Conn. 917 (2002).

## 2.6-7 Judicial Notice

Revised to December 1, 2007

I have decided to accept as proved the fact that *<identify fact>*, even though no evidence has been introduced about it. I believe that the fact is of such common knowledge or capable of such ready and unquestionable demonstration that it would be a waste of our time to hear evidence about it. Thus, you may treat it as proved, even though no evidence was brought out on the point. Of course, with this fact, as with any fact, you will have to make the final decision and you are not required to agree with me.

### *Commentary*

See Code of Evidence §§ 2-1 and 2-2.

See *State v. Reid*, 254 Conn. 540, 549 (2000) (discussing judicial notice of microscopic hair analysis evidence and concluding that an admissibility hearing is not required); *State v. Griffin*, 251 Conn. 671, 702-09 (1999) (discussing "judicial notice of the existence of a body of scientific literature" and concluding that social science evidence that "death qualified" jurors are more "conviction prone" is not the proper subject of judicial notice); *State v. Zayas*, 195 Conn. 611, 613-15 (1985) (time of sunrise and sunset on any day is a matter that falls within the realm of facts which are capable of immediate and accurate demonstration and is an appropriate fact for judicial notice); *State v. Tomanelli*, 153 Conn. 365, 368-71 (1966) (the scientific accuracy of radar as a means of measuring speed is an appropriate fact for judicial notice, but the proposition is not conclusive, and the opponent may submit evidence disputing it); *In re Mark C.*, 28 Conn. App. 247, 252-53, cert. denied, 223 Conn. 922 (1992) (the trial court has the power to take judicial notice of court files from other actions between the parties; however, such judicial notice does not constitute conclusive proof).

## 2.6-8 Evidence Admitted for a Limited Purpose

Revised to December 1, 2007

You will recall that I have ruled that some testimony and evidence have been allowed for a limited purpose or for application to one defendant. Any testimony or evidence which I identified as being limited to a purpose or a defendant, you will consider only as it relates to the limits for which it was allowed, and you shall not consider such testimony and evidence in finding any other facts as to any other issue or defendant.

For example, during the testimony of *<insert name of witness>* I permitted the introduction of *<identify evidence admitted>* as to *<identify issue or defendant>* and instructed you that you could use that evidence, to the extent that you find it should be given weight, only as to that *<identify issue or defendant>*. Any other use of that testimony would be improper.

### ***Commentary***

See *State v. Esposito*, 223 Conn. 299, 323 (1992); *State v. Tyron*, 145 Conn. 304, 309 (1958).

## 2.6-9 Stipulations

Revised to December 1, 2007

In this case evidence in the form of a stipulation between the parties was introduced to show <insert facts stipulated to>. A stipulation is an agreement between the parties concerning some fact, which you as the jury are bound to accept as fact during your deliberations. A stipulation does not, however, establish proof of the element of the crime beyond a reasonable doubt. This stipulation is court exhibit #\_\_. This item is an agreement by both sides. This stipulation is only numbered as an exhibit as a housekeeping matter. No other exhibit is a stipulation, a fact agreed to by both sides.

These stipulations are to be used only for the specific purposes they were entered into for, and not to be used for any other purpose. The stipulations do not include credibility or the weight you may give to the exhibits. You will have these stipulations with you during your deliberations.

### *Commentary*

When a prior conviction is an element of the offense, e.g., criminal possession of a pistol or revolver, the defendant will often stipulate to it. An instruction limiting its use is necessary to prevent prejudice as to any other crimes alleged. See *State v. Hair*, 68 Conn. App. 695, 698-99 n.5, cert. denied, 260 Conn. 925 (2002); *State v. Abraham*, 64 Conn. App. 384, 397-99, cert. denied, 258 Conn. 917 (2001); *State v. Taylor*, 52 Conn. App. 790 (1999); *State v. Davis*, 51 Conn. App. 171, 184 (1998).

## 2.6-10 Third Party Culpability

New, June 13, 2008 (modified November 6, 2014)

There has been evidence that a third party, not the defendant, committed the crime[s] with which the defendant is charged. This evidence is not intended to prove the guilt of the third party, but is part of the total evidence for you to consider. The burden remains on the state to prove each and every element of the offense beyond a reasonable doubt.

It is up to you, and to you alone, to determine whether any of this evidence, if believed, tends to directly connect a third party to the crime[s] with which the defendant is charged. If after a full and fair consideration and comparison of all the evidence, you have left in your minds a reasonable doubt indicating that the alleged third party, <insert name of third party>, may be responsible for the crime[s] the defendant is charged with committing, then it would be your duty to render a verdict of not guilty as to the accused, <insert name of defendant>.

### *Commentary*

In *State v. Arroyo*, 284 Conn. 597, 608-609 (2007), the Court considered for the first time "the standard to be applied to a defendant's request for a jury instruction on third party culpability evidence when such evidence has been introduced." After reviewing the rules governing the admission of such evidence, the Court concluded that the same standard should apply when determining whether a defendant is entitled to a jury instruction on third party culpability. "[I]f the evidence pointing to a third party's culpability, taken together and considered in the light most favorable to the defendant, establishes a direct connection between the third party and the charged offense, rather than merely raising a bare suspicion that another could have committed the crime, a trial court has a duty to submit an appropriate charge to the jury." *Id.*, 610. "[E]vidence that establishes a direct connection between a third party and the charged offense is relevant to the central question before the jury, namely, whether a reasonable doubt exists as to whether the defendant committed the offense. Evidence that would raise only a bare suspicion that a third party, rather than the defendant, committed the charged offense would not be relevant to the jury's determination." *Id.*, 609-10. See *State v. Baltas*, 311 Conn. 786, 809-14 (2014) (evidence that third party was at the crime scene not sufficient to provide a credible alternative explanation for the substantial forensic evidence against the defendant); *State v. Berger*, 249 Conn. 218, 234-38 (1999) (discussing the relationship of third party culpability to reasonable doubt in a case in which the state's theory was that the defendant and the third party acted together).

On the admissibility of third party culpability, see *State v. Corley*, 106 Conn. App. 682, 686-91, cert. denied, 287 Conn. 909 (2008) (strong physical resemblance between defendant and third party); *State v. Guess*, 44 Conn. App. 790, 811 (1997) (motive of third party); *State v. Alvarez*, 216 Conn. 301, 304 (1990) (relevancy and hearsay considerations); *State v. Delossantos*, 211 Conn. 258, 270, cert. denied, 493 U.S. 866 (1989) (third party's culpability not inconsistent with defendant's guilt); *State v. Echols*, 203 Conn. 385, 392 (1987) (misidentification of defendant by victim of another crime).

## 2.6-11 Multiple Charges and/or Informations

New, June 13, 2008 (modified April 23, 2010)

The defendant is charged with \_\_\_ counts [in \_\_\_ separate informations]. [*If there is more than one information:*> The state has commenced \_\_\_ separate cases against the defendant. They have been consolidated for the convenience of trial.]

[*If the information has been amended since beginning of trial:*> To the extent that there have been any changes regarding the content of the information[s], it is of no concern to your deliberations. You are to consider only the specific charges submitted to you and not concern yourself with how the information[s] may have read when it was read to you at the start of trial.]

The defendant is entitled to and must be given by you a separate and independent determination of whether (he/she) is guilty or not guilty as to each of the counts. Each of the counts charged is a separate crime. The state is required to prove each element in each count beyond a reasonable doubt. Each count must be deliberated upon separately. The total number of counts charged does not add to the strength of the state's case.

You may find that some evidence applies to more than one count in more than one information. The evidence, however, must be considered separately as to each element in each count. Each count is a separate entity.<sup>1</sup>

You must consider each count separately and return a separate verdict for each count. This means that you may reach opposite verdicts on different counts. A decision on one count does not bind your decision on another count.

---

<sup>1</sup> When charges involve different victims, the jury must also be instructed to separately consider the charges relating to each victim, and the evidence pertaining to each victim must be clearly distinguished. *State v. Davis*, 286 Conn. 17, 33-36 nn.8-12 (2008); *State v. Ellis*, 270 Conn. 337, 378-79 (2004).

### *Commentary*

This instruction should be tailored to assist the jury in evaluating the evidence for each count. *State v. Santaniello*, 96 Conn. App. 646, 658 and 658-59 n.3, cert. denied, 280 Conn. 920 (2006) (in addition to instructing that each count was a separate offense and must be considered individually, "the court painstakingly went through all of the evidence, explaining to the jury for what purposes each bit of evidence or testimony could be considered in relation to the individual informations and explaining to the jury that the evidence could not be considered for any other purpose"); *State v. Rodriguez*, 91 Conn. App. 112, 121, cert. denied, 276 Conn. 909 (2005) (court instructed the jury to consider each charge separately, and detailed the evidence that applied to more than one charge). "[I]n cases in which the likelihood of prejudice is not overwhelming . . . such curative instructions may tip the balance in favor of a finding that the defendant's right to a fair trial has been preserved." (Internal quotation marks omitted.) *State v.*

*Atkinson*, 235 Conn. 748, 766-67 n.23 (1996); *State v. Virgo*, 115 Conn. App. 786, 795 n.3, cert. denied, 293 Conn. 923 (2009); *State v. David P.*, 70 Conn. App. 462, 470 n.10, cert. denied, 262 Conn. 907 (2002).

## 2.6-12 Medical Treatment Evidence

New, November 1, 2008

Statements made by a complainant to a medical or mental health professional pursuant to receiving or seeking treatment have been admitted as substantive evidence. This means that your consideration of these statements is not limited to credibility or corroboration like prior inconsistent statements and constancy of accusation. These statements may be considered for their content.

### *Commentary*

Include only if the court has also instructed the jury on the use of inconsistent statements for impeachment purposes (Impeachment -- Inconsistent Statements, Instruction 2.4-3) and/or constancy of accusation (Constancy of Accusation, Instruction 7.2-1).

For a discussion of the medical treatment exception to the hearsay rule, see *State v. Cruz*, 260 Conn. 1, 7-10 (2002); *State v. Marcial S.*, 104 Conn. App. 361, 364-67 (2007), cert. denied, 285 Conn. 907 (2008).

## 2.6-13 Other Misconduct - Criminal Sexual Behavior

Revised to November 17, 2015)

When the defendant is charged with criminal sexual behavior, evidence of the defendant's commission of another offense or offenses is admissible and may be considered if it is relevant to prove that the defendant had the propensity or a tendency to engage in the type of criminal sexual behavior with which (he/she) is charged. However, evidence of a prior offense on its own is not sufficient to prove the defendant guilty of the crimes charged in the information. Bear in mind as you consider this evidence that at all times, the state has the burden of proving that the defendant committed each of the elements of the offense charged in the information. I remind you that the defendant is not on trial for any act, conduct, or offense not charged in the information.

### *Commentary*

This approach replaces the former practice of admitting this type of evidence as common scheme or plan. *State v. DeJesus*, 288 Conn. 418, 470-71 (2008); *State v. Antonaras*, 137 Conn. App. 703 (2012) (court improperly instructed jury on the common scheme or plan exception). See Code of Evidence § 4-5 (b).

Evidence of prior sexual misconduct may be admitted under this exception if it is relevant to prove that the defendant had the propensity or a tendency to engage in the type of criminal sexual behavior with which he or she is charged, its probative value outweighs its prejudicial effect, and the jury is given a limiting instruction on its use. *State v. DeJesus*, supra, 288 Conn. 473-74. The trial court should adapt this instruction to the specific purpose for which the evidence was offered.

Defendant does not have to be charged with a sexual crime for evidence of prior criminal sexual behavior to be relevant. *State v. Johnson*, 289 Conn. 437, 455-56 (2008); *State v. Snelgrove*, 288 Conn. 742 (2008).

See also Other Misconduct of Defendant, Instruction 2.6-5.

## 2.6-14 Adequacy of Police Investigation

New, November 6, 2014

You have heard some arguments that the police investigation was inadequate and that the police involved in this case were incompetent. The issue for you to decide is not the thoroughness of the investigation or the competence of the police. The only issue you have to determine is whether the state, in the light of all the evidence before you, has proved beyond a reasonable doubt that the defendant is guilty of the count[s] with which (he/she) is charged.

### *Commentary*

"A defendant may . . . rely upon relevant deficiencies or lapses in the police investigation to raise the specter of reasonable doubt, and the trial court violates his right to a fair trial by precluding the jury from considering evidence to that effect." *State v. Collins*, 299 Conn. 567, 599-600 (2011) (finding that such an instruction as this does not preclude the jury from considering the evidence of the police investigation as it might relate to any weaknesses in the state's case). "*Collins* does not require a court to instruct the jury on the quality of police investigation, but merely holds that a court may not preclude such evidence and argument from being presented to the jury for its consideration." *State v. Wright*, 149 Conn. App. 758, 773-74, cert. denied, 312 Conn. 917 (2014).

## **2.7 GENERAL DEFENSES**

### **2.7 Introduction to General Defenses**

#### **2.7-1 Intoxication -- § 53a-7**

#### **2.7-2 Alibi**

#### **2.7-3 Duress -- § 53a-14**

#### **2.7-4 Entrapment -- § 53a-15**

#### **2.7-5 Diminished Capacity**

**See also**

### **2.8 Justification Defenses**

#### **3.1-2 Renunciation of Criminal Purpose (Accessory) -- § 53a-10**

#### **3.2-3 Renunciation of Criminal Purpose (Attempt) -- § 53a-49 (c)**

#### **3.3-2 Renunciation of Criminal Purpose (Conspiracy) -- § 53a-48 (b)**

## 2.7 Introduction to General Defenses

Revised to November 6, 2014

The defenses codified in the Penal Code are not intended to preclude recognition of any defenses or aspects of the statutory defenses available at common law not inconsistent with the statutory provisions. General Statutes § 53a-4. See *State v. Havican*, 213 Conn. 593, 599 (1990) (construing "great bodily harm" in 53a-19 (a) as consistent with common-law rule of deadly force); *State v. Shaw*, 185 Conn. 372, 379 (1981), cert. denied, 454 U.S. 1155, 102 S.Ct. 1027, 71 L.Ed.2d 312 (1982) (incorporating co-dweller exception into duty to retreat); *State v. Messler*, 19 Conn. App. 432, 436-37 (1989) (recognizing common-law defense of necessity).

The following defenses are general defenses: ignorance or mistake, intoxication, renunciation of criminal purpose, duress, entrapment, justification, renunciation of criminal purpose in a conspiracy charge. See *State v. Rouleau*, 204 Conn. 240, 249 n.12 (1987) (correcting dicta in *State v. Rosado*, 178 Conn. 704, 708 (1979)).

### ***Burden of proof***

General Statutes § 53a-12 (a) places the burden on the state to disprove a general defense beyond a reasonable doubt.

### ***When instruction is required***

A defendant is entitled, as a matter of law, to a requested jury instruction on a defense if there is sufficient evidence of the defense. *State v. Lewis*, 220 Conn. 602, 618-19 (1991); *State v. Havican*, 213 Conn. 593, 597 (1990); *State v. Fuller*, 199 Conn. 273, 278 (1986). "A defendant must, however, assert a recognized legal defense before such a charge will become obligatory. A claim of innocence or a denial of participation in the crime charged is not a legally recognized defense and does not entitle a defendant to a theory of defense charge." *State v. Rosado*, 178 Conn. 704, 707 (1979). In *State v. Baltas*, 311 Conn. 786, 814-18 (2014), the Supreme Court refused to require courts to instruct the jury on any theory of defense with a foundation in the evidence. "We are satisfied that our law under *Rosado*, when combined with the requirement that trial courts must adequately instruct juries on each essential element of each crime for which the defendant is being prosecuted, adequately protects the defendant's right to present a defense." *Id.*, 818.

The standard for determining whether the evidence is sufficient to entitle the defendant to an instruction differs between general and affirmative defenses. A defendant is entitled to have the jury instructed on any general defense "for which there is any foundation in the evidence, no matter how weak or incredible." (Internal quotation marks omitted.) *State v. Havican*, 213 Conn. 593, 597 (1990). The defendant's constitutional right to present a defense "includes a proper jury instruction on the elements of the defense . . . so that the jury may ascertain whether the state has met its burden of disproving it beyond a reasonable doubt." *State v. Fuller*, 199 Conn. 273, 278 (1986).

A defendant is entitled to a requested instruction on an affirmative defense "only if there is sufficient evidence for a rational juror to find that all the elements of the defense are established by a preponderance of the evidence." *State v. Person*, 236 Conn. 342, 353 (1996); *State v. Small*, 242 Conn. 93, 102-103 (1997) (same is true regardless of whether defendant or state requested instruction).

### ***Inconsistent defenses***

"Generally, inconsistent defenses may be interposed in a criminal case. . . . That a defense is interposed which is inconsistent with the defendant's alibi theory does not preclude an instruction as to that defense. . . . The fact that one defense is on the theory that the accused did not commit the offense, as where he relies on alibi, does not deprive him of the right to avail himself of other defenses . . . . To compel a defendant to admit guilt in order to invoke a defense effectively relieves the prosecution of proving his guilt beyond a reasonable doubt and frustrates the assertion of the defense itself and undermines its policy." (Citations omitted; internal quotation marks omitted). *State v. Harris*, 189 Conn. 268, 273 (1983); see also *State v. Folsom*, 10 Conn. App. 643, 649 (1987). A defendant is entitled to an instruction on the defense of self-defense if the evidence warrants it, even if the evidence would also support a claim of innocence because of an unintentional or accidental shooting. *State v. Miller*, 55 Conn. App. 298, 301 (1999), cert. denied, 252 Conn. 923 (2000). "[A] jury may be instructed on a requested defense theory, even if the defendant has testified to facts that contradict the requested charge, if there is sufficient evidence to warrant the instruction." *State v. Person*, 236 Conn. 342, 348 (1996).

## 2.7-1 Intoxication -- § 53a-7

Revised to December 1, 2007

There has been some evidence to the effect that the defendant was under the influence of an intoxicant, namely <insert type of intoxicant>, at the time of the alleged act[s]. The statute pertaining to intoxication reads in pertinent part as follows:

intoxication shall not be a defense to a criminal charge, but in any prosecution for an offense evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negate an element of the crime charged.

"Intoxication" is defined by statute as a substantial disturbance of mental or physical capacities resulting from the introduction of substances into the body.

If you find that the defendant was under the influence of an intoxicant at the time of the alleged act[s], you must then determine what effect, if any, this voluntary intoxication had on (his/her) ability to form the specific intent required to commit the alleged crime[s].

Note that intoxication is not a defense to or an excuse for the commission of a crime. It is only relevant to negate an element of the crime charged, such as intent. If you find that the defendant was intoxicated at the time of the crime, you may take this fact into consideration in determining whether (he/she) was in such a state of intoxication as to be incapable of forming the required specific intent, which is a necessary element for the commission of the crime[s] of <insert crime(s) charged>.

If you believe that the defendant, although intoxicated, was still capable of forming a specific criminal intent, then the defendant's responsibility is the same as if (he/she) were not intoxicated. You must first decide whether the defendant was intoxicated at the time of the alleged crime; and second, whether the defendant was incapable of forming an intent to commit the acts constituting the crime[s] of <insert crime(s) charged>. Remember, the defendant does not have to prove that (he/she) was intoxicated. The state always has the burden of proving beyond a reasonable doubt that the defendant was capable of forming the required intent. Any degree of intoxication, not merely total intoxication, may be considered in determining whether the defendant possessed the requisite intent.

### *Commentary*

When evidence of the defendant's intoxication has been admitted, the jury should be instructed that it must determine whether the defendant committed the acts alleged, whether he or she was intoxicated at the time, and whether the intoxication was such as to render the defendant unable to form the requisite intent. See generally *State v. Ortiz*, 217 Conn. 648 (1991); *State v. Stevenson*, 198 Conn. 560 (1986); *State v. Crawford*, 172 Conn. 65, 70 (1976); *State v. Kellman*, 56 Conn. App. 279, 282-83, cert. denied, 252 Conn. 939 (2000); *State v. Chasse*, 51 Conn. App. 345, 372-76 (1998), cert. denied, 247 Conn. 960-61 (1999); *State v. Maia*, 48 Conn. App. 677, 680-85, cert. denied, 245 Conn. 918-19 (1998); *State v. Brown*, 35 Conn. App. 699, 702-08, cert. denied, 231 Conn. 932 (1994).

The state always has the burden of proving beyond a reasonable doubt that the defendant was not only capable of forming the required intent, but that he or she actually possessed such

intent. *State v. Faria*, 254 Conn. 613, 635-36 (2000); *State v. Austin*, 244 Conn. 226, 237-41 (1998); *State v. Dwyer*, 59 Conn. App. 207, 218-21, cert. denied, 254 Conn. 937 (2000); *State v. Toczko*, 23 Conn. App. 502, 507 n.2 (1990).

In summarizing the evidence of the defendant's intoxication for the jury, the court may limit its discussion to the evidence directly relevant to the ability to form the requisite intent, but should allow the jury to consider all the evidence in determining whether the defendant had possessed the requisite intent. See *State v. Roman*, 67 Conn. App. 194, 205-206 (2001), rev'd in part on other grounds, 262 Conn. 718 (2003) (while there was evidence that defendant had ingested both alcohol and cocaine, the court only referred to alcohol in its instruction because the testimony of cocaine's affects was not relevant to his ability to form the requisite intent).

### ***Intoxication and Recklessness***

The common-law rule regarding intoxication explicitly made the distinction between specific and general intent crimes. *State v. Shine*, 193 Conn. 632, 638-40 (1984). General Statutes § 53a-7 does not, "but rather expressly prohibits the evidence when the mental state is recklessness or negligence." *Id.*, 640. "It is entirely reasonable for the legislature to make a rule that whatever cognitive elements there are in recklessness, they cannot be negated by evidence of voluntary intoxication. The majority of cases in America support the creation of a special rule relating to intoxication, so that, if the only reason why the defendant does not realize the riskiness of his conduct is that he is too intoxicated to realize it, he is guilty of the recklessness which the crime requires." (Internal quotation marks omitted.) *Id.*, 640-41.

"While the defendant cannot introduce evidence of intoxication to dispute recklessness the state can introduce that evidence to prove recklessness." *State v. Shine*, supra, 193 Conn. 642. The jury may be instructed that the jury should disregard evidence of intoxication if it does not negate the element of intent. *State v. Jenkins*, 88 Conn. App. 762, 772-75, cert. denied, 274 Conn. 901 (2005).

## 2.7-2 Alibi

Revised to December 1, 2007 (modified May 10, 2012)

The defendant has presented what is commonly known as an alibi defense. This is a rebuttal by the defendant of the state's attempt to prove that the defendant was present at the scene of the crime and committed or participated in the acts charged.

It is up to the state to prove the defendant's guilt beyond a reasonable doubt, which includes all the elements of a crime, including the defendant's presence at a stated place and the defendant's committing or participating in certain acts at that place at a given time.<sup>1</sup> The alibi evidence that the defendant has placed before you seeks to convince you that the defendant was elsewhere at the time and therefore could not possibly have committed the acts charged. Whether the defendant was or was not present at the scene of the crime, and therefore could or could not have done what the defendant has been charged with doing, is for you to decide, considering all the facts in the case.

Remember, the defendant does not have to prove (his/her) claim that (he/she) was elsewhere. It is sufficient if, on considering all the evidence, there arises in your minds a reasonable doubt as to the defendant's presence at the scene of the crime when it was committed. If you have such a doubt, then the defendant is entitled to be found not guilty.

---

<sup>1</sup> *State v. Vasquez*, 133 Conn. App. 785, 799 (2012); *State v. Milardo*, 224 Conn. 397, 405-407 (1993).

### *Commentary*

An alibi is not an actual defense, but a denial of the state's accusations that the defendant was at a stated place at a stated time. When an alibi is asserted and relied upon as a defense, the defendant is "entitled to have the jury charged that the evidence offered by [the defendant] on that subject is to be considered by them in connection with all the rest of the evidence in ascertaining whether [the defendant] was present, and that if a reasonable doubt on that point exists, it is the jury's duty to acquit [the defendant]." *State v. Butler*, 207 Conn. 619, 631 (1988); see also *State v. McKnight*, 191 Conn. 564, 584 (1984); *State v. Rosado*, 178 Conn. 704, 708 n.2 (1979); *State v. Moran*, 53 Conn. App. 406, 411-13, cert. denied, 249 Conn. 925 (1999); *State v. Marshall*, 3 Conn. App. 126, 127-28 (1985), appeal dismissed, 199 Conn. 244 (1986).

A trial court has no duty to instruct upon alibi in the absence of a request even though substantial alibi evidence may have been introduced by the defense. *State v. Butler*, supra, 207 Conn. 631.

The court is not required to give an alibi instruction unless the defendant has complied with the disclosure rule of Practice Book § 40-21. *State v. Gonzalez*, 69 Conn. App. 649, 662-66, cert. denied, 260 Conn. 937 (2002).

## 2.7-3 Duress -- § 53a-14

Revised to November 6, 2014

The evidence in this case raises the defense of duress. The defense of duress applies to the charge[s] of <insert applicable crimes> [and the lesser included offense[s] of <insert lesser included offenses>.]

After you have considered all of the evidence in this case, if you find that the state has proved beyond a reasonable doubt each element of <insert applicable crimes and any lesser-included offenses>, you must go on to consider whether or not the defendant acted under duress. In this case you must consider this defense in connection with count[s] \_\_\_ of the information.

A person's actions that would otherwise be illegal are legally justified if (he/she) is acting under duress. It is a complete defense to certain crimes, including <insert applicable crimes and any lesser-included offenses>. When, as in this case, evidence of duress is introduced at trial, the state must not only prove beyond a reasonable doubt all the elements of the crime charged to obtain a conviction, but must also disprove beyond a reasonable doubt that the defendant acted under duress.<sup>1</sup> If the state fails to disprove beyond a reasonable doubt that the defendant acted under duress, you must find the defendant not guilty of <insert applicable crimes> despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt. The defendant has no burden of proof whatsoever with respect to this defense.

The statute defining duress reads in pertinent part as follows:

in any prosecution for an offense, it shall be a defense that the defendant engaged in the proscribed conduct because (he/she) was coerced by the use or threatened imminent use of physical force upon (him/her) or a third person, which force or threatened force a person of reasonable firmness in (his/her) situation would have been unable to resist.

### **Factual predicate for claiming duress**

The first thing you must determine is whether the defendant (intentionally / recklessly) placed (himself / herself) in a situation in which it was probable that (he/she) would be subjected to duress. <See Intent: General, Instruction 2.3-1, and Recklessness, Instruction 2.3-4.> If you find that the state has proved beyond a reasonable doubt that the defendant (intentionally / recklessly) placed (himself/herself) in such a situation, then (he/she) cannot claim that (he/she) acted under duress, and you need not consider the defense. If you find that the state has not proved that the defendant (intentionally / recklessly) placed (himself / herself) in a situation in which it was probable that (he/she) would be subjected to duress, then you should go on to consider whether the defendant acted under duress.

The state must disprove at least one of the following elements to disprove the claim of duress.

### **Element 1 - Coercion**

The first element is that the defendant was being coerced to act by the use or threat to use imminent physical force against (him/her/another person) by <insert name of other person>.

The word "using" has its ordinary meaning, that is, the other person has already begun to use force. The word "imminent" means that the person is about to use physical force at that time. It does not encompass the possibility that an act of physical force may take place at some unspecified future time.

The defendant must have actually believed in and been frightened by the likelihood of the threatened harm. If there was a reasonable, legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm, you must find that the defendant was not under duress.<sup>2</sup> If the defendant would have engaged in the criminal activity whether or not there was a threat, then (his/her) actions were not caused by that threat.

### **Element 2 - Reasonableness of defendant's conduct**

The second element is that the defendant's conduct was reasonable under the circumstances in that a person of reasonable firmness under the same circumstances would have been unable to resist the force or threatened force and would have acted as the defendant did. In assessing the situation you may consider tangible factors that differentiate the defendant from the person making the threat, such as size, strength, age, or health. You should also consider such things as the seriousness of the threat, the nature of the impending harm being threatened, the opportunities for escape, and the seriousness of the crime the defendant has committed.

In evaluating the defendant's response to the threat, applying the standard of the "person of reasonable firmness," consider an ordinary person without serious mental and emotional defects. A defendant's personal timidity or lack of firmness in the face of intimidation does not serve as the measure for his or her conduct under this second component of the defense. Community expectations prevail in judging a defendant's response to a threat when that response involves engaging in criminal action. With the defense of duress, a defendant is neither held to a standard of heroism, nor is the defendant allowed to rely on his or her idiosyncratic mental and emotional weaknesses.<sup>3</sup>

### **Conclusion**

In summary, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of *<insert applicable crimes>*, you shall then find the defendant not guilty and not consider the defense.

If, on the other hand, you unanimously find that all the elements of *<insert applicable crimes and any lesser included offenses>* have been proved beyond a reasonable doubt, you must then consider whether the defendant intentionally or recklessly put (himself/herself) in the situation. If you unanimously find beyond a reasonable a doubt that the defendant did intentionally or recklessly put (himself/herself) in the situation, you shall then find the defendant guilty and not consider the defense.

If you unanimously find beyond a reasonable a doubt that the state has failed to prove that the defendant intentionally or recklessly put (himself/herself) in the situation, you shall then consider the defense of duress.

If you unanimously find that the state has disproved beyond a reasonable doubt at least one of the elements of the defense, you must reject that defense and find the defendant guilty.

If you unanimously find that the state has not disproved beyond a reasonable doubt at least one of the elements of the defense, then on the strength of that defense alone you must find the defendant not guilty of <insert applicable crimes> despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt [and not consider any of the lesser-included offenses].

---

<sup>1</sup> *State v. Fuller*, 199 Conn. 273, 280 (1986); *State v. Rouleau*, 204 Conn. 240, 255 (1987); General Statutes § 53a-12 (a).

<sup>2</sup> *United States v. Bailey*, 444 U.S. 394, 410, 100 S.Ct. 624, 62 L.Ed.2d 575 (1980); *State v. Boone*, 15 Conn. App. 34, 40-41, cert. denied, 209 Conn. 811 (1988).

<sup>3</sup> See *State v. Heinemann*, 282 Conn. 281, 303 (2007) (discussing the objective reasonableness of the defense).

#### ***Commentary***

To be entitled, as a matter of law, to a jury instruction on this defense, the defendant must assert the defense and present some evidence on it. See *State v. Rosado*, 178 Conn. 704, 707-708 (1979). The defense is not available for a charge of carrying a pistol without a permit. *State v. Hopes*, 26 Conn. App. 367, 371-72, cert. denied, 221 Conn. 915 (1992).

Duress does not negate the specific intent of the criminal conduct. *State v. Aponte*, 66 Conn. App. 429, 434 n.6 (2001), cert. denied, 259 Conn. 970 (2002).

"Connecticut's duress defense has both a subjective and an objective component. The subjective component is that the defendant actually must have been coerced into the criminal action. . . . "[T]he defendant in fact must have believed that his life would be endangered if he did not perform the criminal act at issue." *State v. Heinemann*, 282 Conn. 281, 301-302 (2007). "The second component of the defense is objective in nature. If the defendant can establish that he was in fact in fear, his conduct is then judged by an objective standard. . . . A defendant's level of resistance must meet community standards of reasonableness. In other words, the jury must conclude that the defendant's belief was a reasonable one." *Id.*, 302.

"[A]lthough the factors considered in determining the defendant's situation, i.e., those that differentiate him from his coercer, such as size, strength, age or health, are somewhat individualized, they do not stand in isolation. Rather, they are to be gauged against the coercer in order to determine whether the defendant acted reasonably and therefore justifiably. Consequently, the trier of fact must consider any salient situational factors surrounding the defendant at the time of the alleged duress, including the severity of the offense the defendant was asked to commit, the nature of the force used or threatened to be used, and the alternative ways in which the defendant may have averted the force or threatened force." *Id.*, 305-306. The Court rejected the defendant's argument in *Heinemann* that adolescents, because of their heightened vulnerability to social pressure and immature decision-making abilities, are entitled to a special instruction allowing the jury to factor their youth into the defense.

## 2.7-4 Entrapment -- § 53a-15

Revised to December 1, 2007 (modified May 20, 2011)

The evidence in this case raises the issue of the defense of entrapment. The statute defining entrapment reads in pertinent part as follows:

in any prosecution for an offense, it shall be a defense that the defendant engaged in the proscribed conduct because (he/she) was induced to do so by a public servant, or by a person acting in cooperation with a public servant, for the purpose of institution of criminal prosecution against the defendant, and that the defendant did not contemplate and would not otherwise have engaged in such conduct.

Entrapment exists only if the defendant was not predisposed to committing the crime at issue. If the criminal intent or the willing disposition to commit the crime originates in the mind of the defendant and the criminal offense is completed, it is no defense that the opportunity is furnished or the defendant is aided in the commission of the crime in order to secure the evidence necessary to prosecute the defendant. On the other hand, it is entrapment if the criminal design originates in the mind of the government agent or police officer and the defendant is induced into the commission of the offense when the defendant would not have committed it except for the urging of the officer or government agent.

The vital factor in determining if there has been an entrapment is whether the defendant was induced by the urging of a governmental agent or police officer to commit a crime that the defendant would not otherwise have committed. Inducement means more than a simple request by a government agent or police officer to break the law. There is a clear distinction between inducing a person to commit a crime and setting the stage to catch that person in the execution of criminal designs of the person's own volition. If officers of the law induce an innocent person to commit a crime that that person would not otherwise commit, it is entrapment and a defense to the crime charged.

It is for you to determine, on the basis of all the evidence, whether the state has proved beyond a reasonable doubt that it did not induce the defendant to commit the offense with which the defendant is charged. If you unanimously find that the state has proved all the elements of the crime of <insert name of offense> beyond a reasonable doubt, and has disproved the claim of entrapment beyond a reasonable doubt, you must return a verdict of guilty on this count. If you unanimously find that the state has failed to prove any one or more of the elements of the crime of <insert name of offense>, or failed to disprove the claim of entrapment, you must return a verdict of not guilty on this count.

### *Commentary*

General Statutes § 53a-15 codifies Connecticut's prior case law on entrapment, and adopts the subjective standard of the defense, as have most states and the federal courts. *State v. Lee*, 229 Conn. 60, 81 (1994). "The subjective test of entrapment focuses on the disposition of the defendant to commit the crime of which he or she is accused." *Id.*, 78. "[T]he subjective defense of entrapment succeeds only if the government, not the accused, is the source of the criminal design. The subjective defense fails if the accused is previously disposed to commit

the crime, and the government merely facilitates or assists in the criminal scheme." *Id.*, 79. See generally *State v. McNally*, 173 Conn. 197, 200-202 (1977); *State v. Fine*, 159 Conn. 296, 299 (1970); *State v. Wilder*, 128 Conn. App. 750, 753-61, cert. denied, 301 Conn. 934 (2011); *State v. Nero*, 122 Conn. App. 763, 783-94 (2010).

To warrant an instruction on entrapment, the defendant must produce evidence of both inducement and lack of criminal disposition. *State v. Hawkins*, 173 Conn. 431, 436 (1977); *State v. Capozziello*, 21 Conn. App. 326, 328-29, cert. denied, 215 Conn. 816 (1990). "Where there is evidence on the issue of entrapment as to which reasoning minds might disagree, the question is one of fact to be submitted to the jury." *State v. Marquardt*, 139 Conn. 1, 7 (1952).

## 2.7-5 Diminished Capacity

New, May 10, 2012

Evidence has been presented in this case indicating that the defendant was of limited or impaired mental capacity at the time of the incident. If the defendant, because of this diminished capacity, was unable to form the intent necessary to the crime(s) of *<insert the crimes to which the defense applies>*, then the element of intent would not have been proven for (this / these) crimes.

An essential element of the crime of *<insert offense>*, with which the defendant is charged, is that (he/she) acted with *<insert the appropriate type of intent:>*<sup>1</sup>

- the specific intent to cause a specific result.
- recklessness.
- criminal negligence.
- the general intent to perform certain acts.

[*<For specific intent:>*

For the purposes of count \_\_, *<identify offense>*, you must determine whether the evidence of diminished capacity is sufficient to raise a reasonable doubt as to the defendant's ability to form the specific intent necessary for *<identify offense>*. *<Refer back to the intent instruction(s) for the offense(s).>* You must be satisfied from the defendant's presentation that there is sufficient evidence of the effects of (his/her) various mental disorders on (his/her) capacity to form the specific intent to commit *<identify offense>*.]

[*<For recklessness:>*

For the purposes of count \_\_, *<identify offense>*, you must determine whether the evidence of diminished capacity is sufficient to raise a reasonable doubt as to the defendant's ability to be aware of and consciously disregard substantial and unjustifiable risks. You must be satisfied from the defendant's presentation that there is sufficient evidence of the effects of (his/her) various mental disorders on (his/her) capacity to be aware of such risks. *<Refer back to the intent instruction for the offense(s).>*]

[*<For criminal negligence:>*

For the purposes of count \_\_, *<identify offense>*, you must determine whether the evidence of diminished capacity is sufficient to raise a reasonable doubt as to the defendant's ability to perceive substantial and unjustifiable risks. You must be satisfied from the defendant's presentation that there is sufficient evidence of the effects of (his/her) various mental disorders on (his/her) capacity to perceive of such risks. *<Refer back to the intent instruction for the offense(s).>*]

[*<For general intent:>*

For the purposes of count \_\_, *<identify offense>*, you must determine whether the evidence of diminished capacity is sufficient to raise a reasonable doubt as to the defendant's capacity to form the intent to *<identify the specific acts of the crime>*.<sup>2</sup>]

In connection with this issue, you have heard testimony from <identify the expert witnesses>. In assessing these opinions, you will bear in mind the instructions I previously gave you concerning the weight to be accorded the testimony of expert witnesses, including the opinions based on hypothetical questions.

You may also give weight to such relevant testimony as you find credible from lay witnesses who have testified concerning the events surrounding the events that occurred.

The state has the burden to establish the element of the defendant's intent to commit <insert specific offense> beyond a reasonable doubt. The defendant does not have to prove that he did not have the intent. In deciding whether the defendant had the necessary intent, you must consider all the evidence bearing on that issue, including the evidence of the defendant's limited or impaired mental capacity and his conduct before, during and after the alleged incident. If you have a reasonable doubt on that issue, you must find (him/her) not guilty.

---

<sup>1</sup> Diminished capacity, unlike intoxication, may be raised to negate either general or specific intent. See *State v. Gracewski*, 61 Conn. App. 726, 736-37 (2001) (reckless indifference manslaughter and risk of injury to a minor); see also *State v. Shine*, 193 Conn. 632, 640-42 (1984).

<sup>2</sup> For example, if the defendant is charge with risk of injury to a minor the defendant would have to form the intent to perform acts that are likely to impair the health of a child. See *State v. Gracewski*, 61 Conn. App. 726, 736 (2001).

#### ***Commentary***

This instruction is adapted from instructions cited in *State v. Bharrat*, 129 Conn. App. 1, 4 n.2 (2011); *State v. Thurman*, 10 Conn. App. 302, 322 n.18 (1987); *State v. Gracewski*, 61 Conn. App. 726, 736-37 (2001).

Diminished capacity differs from extreme emotional disturbance because the latter is an affirmative defense that does not negate intent but provides mitigation to a charge of murder. *State v. Jordan*, 129 Conn. App. 215, 226 n.5, cert. denied, 302 Conn. 910 (2011) (defendant's claim that rage comes within diminished capacity not accurate as it does not implicate the defendant's capacity for forming intent).

If the defendant is also raising an insanity defense, the court must be sure to clearly distinguish the two. See *State v. Thurman*, supra, 10 Conn. App. 325.

On the need for expert testimony on diminished capacity, see *State v. Jordan*, supra, 129 Conn. App. 226, *State v. Pagano*, 23 Conn. App. 447, 452, cert. denied, 217 Conn. 802 (1990); *State v. Thurman*, 10 Conn. App. 302, 323 n.19 (1987). The Court in *Pagano* explained the difference in the type of evidence required to send the issue of diminished capacity to the jury and that for intoxication:

Nowhere in the testimony or exhibits did the defendant present any evidence of the effects of psychopathic, sociopathic, or antisocial behavior, organic brain disorder, seizures, depression, or cerebral palsy. In fact, these terms were not even defined for the jury. While a jury is entitled to infer impairment from intoxication because it is an effect which is common knowledge and is an inference which is clearly within the ability of the

jurors, as laypersons, to draw based on their own common knowledge and experience . . . a jury should not be allowed to make a similar leap in reasoning when dealing with diminished capacity. Unlike the effects of intoxication, the effects of complex mental disorders are not commonly known to laypersons. . . . The trial court's refusal to instruct the jury on diminished capacity is justified, therefore, by the defendant's failure to provide direct evidence of the effects of his various mental disorders on his capacity to form intent.

## **2.8 JUSTIFICATION DEFENSES**

### **2.8 Introduction to Justification Defenses**

#### **2.8-1 Self-Defense and Defense of Others -- § 53a-19**

#### **2.8-2 Exceptions to Justification: Provocation, Initial Aggressor, Combat by Agreement -- § 53a-19 (c)**

#### **2.8-3 Exceptions to Use of Deadly Physical Force: Duty to Retreat, Surrender Property, Comply with Demand -- § 53a-19 (b)**

#### **2.8-4 Defense of Premises -- § 53a-20**

#### **2.8-5 Defense of Personal Property -- § 53a-21**

#### **2.8-6 Use of Physical Force by Peace Officer in Making Arrest or Preventing Escape -- § 53a-22 (c)**

#### **2.8-7 Use of Physical Force by Private Person at the Request of a Peace Officer in Making Arrest or Preventing Escape -- § 53a-22 (d)**

#### **2.8-8 Use of Physical Force by Private Person to Make an Arrest -- § 53a-22 (f)**

#### **2.8-9 Resisting Arrest by Physical Force -- § 53a-23**

## 2.8 Introduction to Justification Defenses

Revised to May 23, 2013

Justification is a general defense to a crime involving the use of physical force. The use of physical force upon another person that results in actual injury, while usually a criminal assault, is not criminal if it is permitted or justified by a provision of law or statute. General Statutes § 53a-16. Therefore, when one who is accused of committing an assault claims that he or she acted under a legal justification, the jury must examine the circumstances and discover whether the act was truly justified. The court's function in instructing the jury is to tell the jury the circumstances in which the use of physical force against another person is legally justified.

### ***Codification***

Justification is defined in General Statutes §§ 53a-17 -- 53a-23. "The statutes which enumerate the situations where the use of force is justified attempt to restate the common law. They should be read in the light of their common-law background, and the fact that an individual section does not fully state the relevant common-law rule, with all its possible applications, exceptions or implications, should not prevent a court from reading it as incorporating the full body of common-law rules relevant thereto." *State v. Shaw*, 185 Conn. 372, 379 (1981). Reliance on the common law is inappropriate when the statute directly addresses the question; i.e., when the statute is on point, the statutory language controls. *State v. Corchado*, 188 Conn. 653, 662-63 (1982).

### ***Burden of proof***

The burden is on the state to prove beyond a reasonable doubt that the defendant was not justified in using physical force. General Statutes § 53a-12 (a). "[A] defendant has no burden of persuasion for a claim of self-defense; he has only a burden of production. . . . This burden is light, however, and may be satisfied if there is any foundation in the evidence for the defendant's claim, no matter how weak or incredible." *State v. Clark*, 264 Conn. 723, 730-31 (2003). Once this burden is satisfied, the defendant is entitled to the instruction as a matter of law "even where the defendant has not submitted a request to charge on a particular aspect of his defense and has not objected to its omission from the charge after the charge has been given." *State v. Cruz*, 75 Conn. App. 500, 510 (2003); *State v. Bailey*, 209 Conn. 322, 340 (1988).

### ***General validity of laws and court orders allowing physical force -- § 53a-17***

Section 53a-17 justifies the use of physical force "when such conduct is required or authorized by a provision of law or by a judicial decree, including but not limited to (1) laws defining duties and functions of public servants, (2) laws defining duties of private citizens to assist public servants in the performance of certain of their functions, (3) laws governing the execution of legal process, (4) laws governing the military services and the conduct of war, and (5) judgments and orders of courts." See, e.g., Use of Physical Force by Peace Officer in Making Arrest or Preventing Escape, Instruction 2.8-6.

### ***Justification in certain circumstances -- § 53a-18***

General Statutes § 53a-18 includes six circumstances in which physical force is justified. Whenever the evidence raises justification under any of these circumstances, the jury must be charged with the permissible scope of the justifiable use of physical force.

*Justification of Force by Persons Entrusted to Care for Minors or Incompetent Persons -- § 53a-18 (1)*

A parent, guardian, or other person entrusted with the care and supervision of a minor child or an incompetent person, except a person entrusted with the care and supervision of a minor for school purposes as described in General Statutes § 53a-18 (6) (see below), is legally entitled to use physical force upon such minor child or incompetent person. To be justified, however, the person exercising this force must reasonably believe that it was necessary in order to maintain discipline or to promote the welfare of the minor or incompetent person. This force must be reasonable, and deadly force is not permitted. See *State v. Brocuglio*, 56 Conn. App. 514, 517-18, cert. denied, 252 Conn. 950 (2000) (whether the parent's physical force on a child is reasonable is for the jury to decide).

The statute recognizes the common-law right of parents to punish children for their own welfare. See *State v. Leavitt*, 8 Conn. App. 517, 522, cert. denied, 201 Conn. 810 (1986). Both the common law and the statute require that the use of physical force be reasonable. *Id.* See also General Statutes § 17a-101 (parents' right to discipline limited by child abuse statute).

The parental justification defense may be raised to a charge of risk of injury to a minor involving blatant physical abuse under the act prong of § 53-21 (a) (1). *State v. Nathan J.*, 294 Conn. 243, 260 (2009). See Risk of Injury to a Minor (Act Prong), Instruction 6.11-2.

*Justification of Force by a Correctional Official -- § 53a-18 (2)*

An authorized official of a correctional institution or facility is permitted to use physical force in order to maintain order and discipline, but only if that force is reasonable, and is authorized by the rules and regulations of the state department of correction. Such force may only be used for the purpose of maintaining order and discipline, and not for retaliation or punishment.

This section is applicable not only to a charge of assault brought against a correctional officer, but to offenses related to an assault upon a correctional officer when the defendant attempts to raise self-defense. See *Interfering with an Officer*, Instruction 4.3-1, and *Assault of Public Safety or Emergency Medical Personnel*, Instruction 4.3-3.

*Justification of Force by Employee of Common Carrier -- § 53a-18 (3)*

Force may legally be used by a person responsible for the maintenance of order in a common carrier, such as a railroad, bus, airplane, taxi, etc. Such person, or someone acting under his or her direction, may use reasonable force if he or she reasonably believes that it is necessary to maintain order. The right of a person responsible for maintaining order in a common carrier to use reasonable force to maintain such order, is a restatement of the common-law rule. See, e.g., *Downs v. New York & New Haven R. Co.*, 36 Conn. 287, 291 (1869); *Crocker v. New London, Willimantic, and Palmer, R.R. Co.*, 24 Conn. 249, 263-64 (1855) (railroad employees have the right to use reasonable force to eject passengers who fail to tender the proper fare). See also *Pease v. Delaware, L. & W. R. Co.*, 101 N.Y. 367, 371, 5 N.E. 37 (1886) (disorderly passengers may be ejected for causing danger, discomfort or annoyance to passengers).

Even deadly force may be used, but only in cases where it is reasonably believed to be necessary to prevent death or serious physical injury. It should be noted that although § 53a-18

uses the term "physical injury," § 53a-19 limits the use of deadly force to the threat of deadly force or "great bodily harm," which is broader than serious physical injury.

*Justification of Force to Prevent Suicide -- § 53a-18 (4)*

A person is permitted to use force if he or she reasonably believes that another person is about to commit suicide, or to inflict serious bodily harm upon himself or herself. Only reasonable force may be used, and the person must reasonably believe that such force is necessary to prevent the apparent suicide or serious injury.

*Justification of Force by a Physician -- § 53a-18 (5)*

Force may be used by a licensed physician or psychologist, or someone acting under his or her direction. This force must be reasonable and for the purpose of providing a recognized form of treatment that the doctor reasonably believes is necessary to promote the physical or mental health of a patient. Such force is only allowed in two situations: (1) when the patient has consented to such treatment, or if the patient is a minor or incompetent person, when the consent of the person entrusted with his care and supervision has been obtained; or (2) when the physician or psychologist has determined that a medical emergency exists. In the second situation, the doctor is permitted to use force if he or she reasonably believes that no consent can be obtained from a competent person, and that a reasonable person would provide consent in order to safeguard the welfare of the patient.

*Justification of Force in Schools -- § 53a-18 (6)*

A teacher or other person entrusted with the care of a minor for school purposes may use reasonable force upon such minor in certain situations. The teacher must reasonably believe that force is necessary to: 1) protect himself or herself or others from immediate physical injury; 2) obtain possession of a dangerous instrument or controlled substance; 3) protect property from physical damage; or 4) restrain such minor or remove such minor to another area to maintain order.

Section 53a-18 restates the common-law rule allowing the use of force by teachers or other school authorities who are placed in loco parentis. For cases discussing the common-law rule, see *Andreozzi v. Rubano*, 145 Conn. 280 (1958); *Calway v. Williamson*, 130 Conn. 575 (1944); *O'Rourke v. Walker*, 102 Conn. 130 (1925) (power of school authority to use physical discipline may extend beyond school grounds and hours); *Sheehan v. Sturges*, 53 Conn. 481 (1885); *Peck v. Smith*, 41 Conn. 442 (1874). See also *Ingraham v. Wright*, 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977).

***Subjective-objective standard***

Justification defenses are similar in that they focus on the defendant's reasonable beliefs as to circumstances defined in the statutes and the necessity of using force. The use in these statutes of the phrase "reasonably believes" has been interpreted by the Supreme Court as embodying a subjective-objective standard. See *State v. Saunders*, 267 Conn. 363, 373 (2004); *State v. Wright*, 77 Conn. App. 80, 88 (2003).

"The jury must view the situation from the perspective of the defendant. Section 53a-19 (a) requires, however, that the defendant's belief ultimately must be found to be reasonable." *State v. DeJesus*, 194 Conn. 376, 389 n.13 (1984). "The self-defense statute, i.e., General Statutes § 53a-19 . . . focuses on the person . . . claiming self-defense. It focuses on what *he*

reasonably believes under the circumstances and presents a question of fact . . . . This statutory emphasis upon the defendant further demonstrates the function of the jury in their evaluation of the self-defense claim." (Emphasis in original.) *State v. Corchado*, 188 Conn. 653, 663 (1982). "The jury's initial determination, therefore, requires the jury to assess the veracity of witnesses, often including the defendant, and to determine whether the defendant's account of his belief . . . at the time of the confrontation is in fact credible. This probe into the defendant's actual state of mind clearly demonstrates the function of the jury in [its] evaluation of the self-defense claim." *State v. Prioleau*, 235 Conn. 274, 286-87 (1995). "[T]he jury must make a further determination as to whether that belief was reasonable, from the perspective of a reasonable person in the defendant's circumstances." *Id.*, 287.

In instructing the jury on the reasonableness of the defendant's belief, it was error to refer to "an average person of ordinary intelligence in like circumstances." *State v. Anderson*, 227 Conn. 518, 533 (1993). "[T]here is nothing in [the subjective-objective] test that refers to a 'person of ordinary intelligence.'" *Id.*; see also *State v. Cruz*, 75 Conn. App. 500, 512-13 n.10 (2003). "The defendant's conduct must be judged ultimately against that of a reasonably prudent person." (Internal quotation marks omitted.) *State v. Carter*, 48 Conn. App. 755, 772 (1998).

It is not required that the jury find that the victim was, in fact, using or about to use physical force against the defendant. *State v. Clark*, 264 Conn. 723, 732-33 (2003). An instruction that requires the jury to find that the victim was not using or about to use physical force is thus improper. *Id.*; *State v. Wortham*, 80 Conn. App. 635, 644-46 (2003).

### ***Imperfect self-defense***

Connecticut does not recognize the doctrine of "imperfect self-defense," under which an honest but unreasonably held belief is a mitigating factor that allows a defendant to be convicted of a lesser crime because although the defendant may have acted with the requisite intent, he or she is less culpable. Connecticut's Penal Code provides a similar treatment of extreme emotional distress as a mitigating factor. "Under an instruction for extreme emotional disturbance, as with imperfect self-defense as applied by other jurisdictions, the defendant must be found to have intentionally caused the death of the victim before the crime can be mitigated downward to a lesser offense." *State v. Abdalaziz*, 248 Conn. 430, 440 (1999)

When a defendant attempts to raise the defense that he or she had an honest but unreasonably held belief, the proper approach is a lesser included offense. "[I]f evidence is presented that the defendant had an honest but unreasonable belief in the need to use physical force, such evidence may be sufficient for the jury to find the defendant innocent of the greater crime for which specific intent is required, and guilty of the lesser included offense for which recklessness is required, and therefore, the jury should receive a . . . lesser included offenses instruction on that basis." *Id.*, 441.

## 2.8-1 Self-Defense and Defense of Others -- § 53a-19

Revised to June 12, 2009 (modified May 23, 2013)

The evidence in this case raises the issue of (self-defense / the defense of others). (Self-defense / The defense of others) applies to the charge[s] of <insert applicable crimes> [and the lesser included offense[s] of <insert lesser included offenses>.]

After you have considered all of the evidence in this case, if you find that the state has proved beyond a reasonable doubt each element of a crime to which (self-defense / defense of others) applies, you must go on to consider whether or not the defendant acted in (self-defense / the defense of others). In this case you must consider this defense in connection with count[s] \_\_\_ of the information.

A person is justified in the use of force against another person that would otherwise be illegal if (he/she) is acting in the defense of (self / others). It is a complete defense to certain crimes, including <insert applicable crimes>. When, as in this case, evidence of (self-defense / the defense of others) is introduced at trial, the state must not only prove beyond a reasonable doubt all the elements of the crime charged to obtain a conviction, but must also disprove beyond a reasonable doubt that the defendant acted in (self-defense / the defense of others). If the state fails to disprove beyond a reasonable doubt that the defendant acted in (self-defense / the defense of others), you must find the defendant not guilty despite the fact that you have found the elements of the crime proved beyond a reasonable doubt. The defendant has no burden of proof whatsoever with respect to this defense.

There is a statute that defines (self-defense / the defense of others) and you are to apply that definition in reviewing the evidence in this case and not apply any common or colloquial meaning that you may have heard before. The statute defining (self-defense / the defense of others) reads in pertinent part as follows:

a person is justified in using reasonable physical force upon another person to defend (himself/herself/a third person) from what (he/she) reasonably believes to be the use or imminent use of physical force, and (he/she) may use such degree of force which (he/she) reasonably believes to be necessary for such purpose.

The statute requires that, before a defendant uses physical force upon another person to defend (himself/herself/a third person), (he/she) must have two "reasonable beliefs." The first is a reasonable belief that physical force is then being used or about to be used upon (him/her/a third person). The second is a reasonable belief that the degree of force (he/she) is using to defend (himself/herself/a third person) from what (he/she) believes to be an ongoing or imminent use of force is necessary for that purpose.

### **Deadly and non-deadly physical force<sup>1</sup>**

The law distinguishes non-deadly physical force from deadly physical force. "Physical force" means actual physical force or violence or superior physical strength. The term "deadly physical force" is defined by statute as physical force which can reasonably be expected to cause death or serious physical injury. Under this definition, the physical force used by the defendant need not actually have caused a death or a serious physical injury in order to be considered

deadly physical force, nor need it have been expected or intended by the defendant to result in such serious consequences. Instead, what determines whether the defendant used deadly physical force is whether the force actually used by the defendant could reasonably have been expected to cause death or serious physical injury. "Physical injury" is defined by statute as impairment of physical condition or pain, and "serious physical injury" is defined as physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ.

It is up to you to determine whether the defendant used deadly physical force or non-deadly physical force against *<insert name of the other person>*. You are to make that determination after considering all the evidence. If the state claims that the defendant used deadly physical force, the state must prove that beyond a reasonable doubt. The first question you must resolve, then, is whether the level of force used by the defendant rises to the level of deadly physical force, or is some lower degree of physical force.

### **Reasonable beliefs**

Once you have determined whether the defendant has used deadly or non-deadly force, you must then go on to consider whether the defendant justifiably acted in (self-defense / defense of others).

[*<Optional language:>*<sup>2</sup> The test you are to apply is a subjective-objective test, meaning that it has some subjective aspects and some objective aspects. You must first consider the situation from the perspective of the defendant; that is, what did the defendant actually believe, as best as can be inferred from the evidence. This is the subjective aspect of the test. The statute requires, however, that the defendant's belief be reasonable, and not irrational or unreasonable under the circumstances; that is, would a reasonable person in the defendant's circumstances have reached that belief. This is the objective aspect of the test.]

Each of the reasonable belief requirements of the statute requires you to ask two questions. The first question you must ask is, simply, as a matter of fact, whether the defendant actually -- that is, honestly and sincerely -- entertained the belief in question when (he/she) acted as (he/she) did. The second question you must ask is whether the defendant's actual belief was reasonable, in the sense that a reasonable person in the defendant's circumstances at the time of (his/her) actions, viewing those circumstances from the defendant's point of view, would have shared that belief. A defendant cannot justifiably act on (his/her) actual belief, however honestly or sincerely (he/she) held it, if that belief would not have been shared by a reasonable person in (his/her) circumstances, viewing those circumstances from the defendant's point of view. Therefore, the defense of (self-defense / defense of others) has four elements:<sup>3</sup>

1. The defendant actually believed that someone else was using or about to use physical force against (him/her/a third person). If you have found that the force used by the defendant was deadly physical force, then this element requires that the defendant actually believed that the other person 1) was using or about to use deadly physical force against (him/her/a third person), or 2) was inflicting or about to inflict great bodily harm upon (him/her/a third person).

2. That belief was reasonable because a reasonable person in the defendant's circumstances, viewing those circumstances from the defendant's perspective, would have shared that belief.
3. The defendant actually believed that the degree of force (he/she) used was necessary to repel the attack. Again, if you have found that the force used by the defendant was deadly physical force, then this element requires that the defendant actually believed that deadly physical force was necessary to repel the attack.
4. That belief was reasonable because a reasonable person in the defendant's circumstances, viewing those circumstances from the defendant's perspective, would have shared that belief.

The defendant has no burden of proof regarding any of these elements. Instead, the state bears the sole and exclusive burden of proving beyond a reasonable doubt that the defendant did not act in (self-defense / the defense of others), a burden it can meet by disproving at least one of these elements beyond a reasonable doubt. I will go over each of these elements again in detail.

#### **Element 1 - Actual belief regarding use of physical force by other person**

The first element is that when the defendant used defensive force against *<insert name of other person>*, (he/she) actually -- that is, honestly and sincerely -- believed that the other person was using or about to use physical force against (him/her/*<insert name of third person>*). The word "using" has its ordinary meaning, that is, the other person has already begun to use force. The word "imminent" means that the person is about to use physical force at that time. It does not encompass the possibility that an act of physical force may take place at some unspecified future time.

If you have found that the force used by the defendant was deadly physical force, then you must find that the defendant actually believed that *<insert name of other person>* was not only using or about to use physical force upon (him/her/*<insert name of third person>*), but that the other person was either using or about to use deadly physical force against (him/her/*<insert name of third person>*), or inflicting or about to inflict great bodily harm upon (him/her/*<insert name of third person>*). "Great bodily harm" is not limited by the definition of serious physical injury and may encompass other acts such as sexual assault or the threat of sexual assault.<sup>4</sup> The term "great" has its ordinary meaning and indicates a bodily harm that is substantially more than minor or inconsequential harm.

The act of *<insert name of other person>* leading to the defendant's use of defensive physical force need not be an actual threat or assault. The test is not what the other person actually intended, but what the other person's act caused the defendant to believe was the intention of the other. In other words, the danger to which the defendant was reacting need not have been actual or real. In judging the danger to (himself/herself/*<insert name of third person>*) the defendant is not required to act with infallible judgment. A person acting in (self-defense / the defense of others) is sometimes required to act instantly and without time to deliberate and investigate. Under such circumstances it is possible to perceive an actual threat when none in fact existed.

**Element 2 - Reasonableness of that belief**

The second element is that the defendant's actual belief about the force being used or about to be used against (him/her/<insert name of third person>) was a reasonable belief. This means that under the circumstances of the case, viewing those circumstances from the defendant's point of view, the defendant's actual belief that <insert name of other person> was using or about to use physical force or deadly physical force against (him/her/<insert name of third person>) was reasonable because a reasonable person in the defendant's situation at the time of (his/her) actions, viewing the circumstances from the defendant's point of view, would have shared that belief.

**Element 3 - Actual belief regarding degree of force necessary**

The third element is that when the defendant used physical force upon <insert name of other person> for the purpose of defending (himself/herself/<insert name of third person>), (he/she) actually -- that is, honestly and sincerely -- believed that the degree of force (he/she) used was necessary for that purpose. This applies whether you have found that the defendant used deadly physical force or not. The question is whether the defendant believed that it was necessary to use the degree of force that (he/she) used to defend (himself/herself/<insert name of third person>) from the attack.

**Element 4 - Reasonableness of that belief**

The fourth element is that the defendant's actual belief about the degree of force necessary to defend (himself/herself) / <insert name of third person> was a reasonable belief. This means that under the circumstances of the case, viewing those circumstances from the defendant's point of view, the defendant's actual belief that the degree of force used was necessary to defend (himself/ herself/ <insert name of third person>) was reasonable because a reasonable person in the defendant's circumstances at the time of (his/her) actions, viewing those circumstances from the defendant's point of view, would have shared that belief.

**Exceptions**

<Insert any applicable statutory disqualifications. See *Exceptions to Justification: Provocation, Initial Aggressor, Combat by Agreement, Instruction 2.8-2 and Exceptions to Use of Deadly Physical Force: Duty to Retreat, Surrender Property, Comply with Demand, Instruction 2.8-3.*>

**The state's burden<sup>5</sup>**

You must remember that the defendant has no burden of proof whatsoever with respect to the defense of (self-defense / the defense of others). Instead, it is the state that must prove beyond a reasonable doubt that the defendant did not act in (self-defense / the defense of others) if it is to prevail on its charge[s] of <insert applicable crimes>[, or of any of the lesser-included offenses on which you have been instructed]. To meet this burden, the state need not disprove all four of the elements of (self-defense / the defense of others). Instead, it can defeat the defense of (self-defense / the defense of others) by disproving any one of the four elements of self-defense beyond a reasonable doubt to your unanimous satisfaction. You must find that the defendant did not act in (self-defense / defense of others), if you find any of the following:

1. The state has proved beyond a reasonable doubt that, when the defendant used physical force, (he/she) did not actually believe that <insert name of other person> was using or

about to use physical force against (him/her/<insert name of third person>). If you have found that the force used by the defendant was deadly physical force, then the state must prove that the defendant did not actually believe that the other person 1) was using or about to use deadly physical force against (him/her/a third person), or 2) was inflicting or about to inflict great bodily harm upon (him/her/a third person).

**OR**

2. The state has proved beyond a reasonable doubt that the defendant's actual belief concerning the degree of force being, or about to be, used against (him/her) was unreasonable, in the sense that a reasonable person, viewing all the circumstances from the defendant's point of view, would not have shared that belief.

**OR**

3. The state has proved beyond a reasonable doubt that, when the defendant used physical force to defend (himself/herself/<insert name of third person>) against <insert name of other person>, (he/she) did not actually believe that the degree of force (he/she) used was necessary for that purpose. Here again, as with the first requirement, an actual belief is an honest, sincere belief.

**OR**

4. The state has proved beyond a reasonable doubt that, if the defendant did actually believe that the degree of force (he/she) used to defend (himself/herself/<insert name of third person>) against <insert name of other person> was necessary for that purpose, that belief was unreasonable, in the sense that a reasonable person, viewing all the circumstances from the defendant's point of view, would not have shared that belief.

[<If any statutory disqualifications have been included:>

You must also find that the defendant did not act in (self-defense / defense of others), if you find that the state has proved beyond a reasonable doubt that <insert the statutory disqualifications upon which the jury has been instructed:>

- **Provocation:** the defendant provoked <insert name of decedent/complainant> into using physical force against (him/her).
- **Initial aggressor:** the defendant was the initial aggressor in the encounter.
- **Combat by agreement:** the physical encounter between the defendant and <insert name of other person> was a combat by agreement.
- **Duty to retreat:** the defendant had a duty to retreat from the physical encounter because (he/she) knew (he/she) could do so with complete safety.
- **Surrender property:** the defendant knew that (he/she) would not need to use physical force against <insert name of other person> if (he/she) surrendered property to <insert name of other person>.
- **Comply with demand:** the defendant knew that (he/she) would not need to use physical force against <insert name of other person> if (he/she) complied with the demand to <insert name of demand>.]

## **Conclusion**

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of a crime to which (self-defense / defense of others) applies, you shall then find the defendant not guilty and not consider the defense.

If you unanimously find that all the elements of a crime to which (self-defense / defense of others) applies have been proved beyond a reasonable doubt, you shall then consider the defense of (self-defense / defense of others). If you unanimously find that the state has disproved beyond a reasonable doubt at least one of the elements of the defense [or has proved one of the statutory disqualifications], you must reject that defense and find the defendant guilty.

If, on the other hand, you unanimously find that the state has not disproved beyond a reasonable doubt at least one of the elements of the defense, [or has not proved one of the statutory disqualifications], then on the strength of that defense alone you must find the defendant not guilty despite the fact that you have found the elements of the crime proved beyond a reasonable doubt.<sup>6</sup>

---

<sup>1</sup> If there is an issue as to whether the degree of force used was non-deadly physical force or deadly physical force, it should be submitted to the jury. If the parties stipulate to it on the record you may instruct the jury that "the parties agree that in this case the force used was deadly." See *State v. Dorans*, 261 Conn. 730, 746 n.9 (2002) (sufficient evidence that force used was deadly to submit question to jury); *State v. Whitford*, 260 Conn. 610, 631 (2002) (court properly gave supplemental instruction that jury should determine the level of force, when victim suffered stab wounds that could have been fatal but were not); *State v. Wayne*, 60 Conn. App. 761, 765 (2000) (court improperly instructed the jury that the defendant, as a matter of law, had used deadly physical force by pointing a gun at victim).

<sup>2</sup> It is well established that § 53a-19 imposes a "subjective-objective" inquiry on a claim of self defense or defense of others. This means that a defendant's "reasonable beliefs" must be evaluated from the defendant's subjective point of view, i.e., what he or she actually believed, and from an objective point of view, i.e., what a reasonable person in the defendant's situation would have believed. See the discussion in the Introduction to this section. The basic approach to self-defense thus requires the jury to ask, and answer, four questions: 1) Did the defendant believe that he/she was being subjected to imminent physical harm? 2) Would a reasonable person in the defendant's situation have believed that to be so? 3) Did the defendant believe that the degree of force he/she used was necessary to ward off the attack? 4) Would a reasonable person in the defendant's situation have believed that such a degree of force was necessary? An instruction that clearly guides the jury in addressing these four questions has properly instructed it on applying the subjective-objective standard. Optional language is included at the beginning of this section of the instruction to provide the jury with an analytical description of the standard.

<sup>3</sup> The model instruction takes the approach of calling each of the inquiries the jury must make "elements," analytically similar to the elements of an offense. They may also be labeled "parts" or "components," or simply "circumstances under which a person is not justified in using physical force in self-defense."

<sup>4</sup> See *State v. Havican*, 213 Conn. 593, 600-601 (1990) (concluding that "the threat of great bodily harm and the threat of serious physical injury are two separate grounds that each justify the use of deadly force in self-defense").

<sup>5</sup> The appellate courts have not addressed the issue of whether the state's burden of proof on a claim of self-defense is best expressed in the positive ("the state must prove that the defendant did not believe...") or the negative ("the state must disprove that the defendant believed..."). Although they have recited portions of trial courts' charges that have stated the burden of proof in both ways; see, e.g., *State v. Singleton*, 97 Conn. App. 679, 693 (2006), rev'd on other grounds, 292 Conn. 734 (2009); *State v. Peters*, 40 Conn. App. 805, 817 (1996); such recitation carries no "precedential imprimatur" with regard to the propriety or impropriety of either approach. See *State v. Romero*, 269 Conn. 481, 490 (2004).

<sup>6</sup> See *State v. Terwilliger*, 294 Conn. 399, 417-18 (2009) (advisable to instruct the jury on the consequences of the state's failure to meet its burden as it may enhance the jury's understanding of the defense).

### ***Commentary***

"Although § 53a-19 provides for two separate, but related defenses -- self-defense and defense of others -- [the Supreme Court has] interpreted the provision consistently without regard to the specific type of claim asserted thereunder. . . . [B]ecause [the] court has had far fewer occasions to consider defense of others claims under § 53a-19, [the court] looks to [its] precedents concerning the application of this section to self-defense claims to [claims of defense of others]." *State v. Bryan*, 307 Conn. 823, 833-34 (2013).

If the evidence, if believed, is sufficient to raise "a reasonable doubt in the mind of a rational juror" as to whether the defendant acted in self-defense, then the defendant is entitled to a jury instruction on the defense. *State v. Edwards*, 234 Conn. 381, 390 (1995).

A defendant does not have to "admit that he intended to kill the victim to assert the justification of self-defense." *State v. Miller*, 55 Conn. App. 298, 300 (1999), cert. denied, 252 Conn. 923 (2000). Furthermore, a defendant is permitted to present inconsistent defenses. *Id.*, 301. Accordingly, a defendant is entitled to an instruction on the defense of self-defense if the evidence warrants it, even if the evidence would also support a claim of innocence because of an unintended or accidental shooting. *Id.*

"Self-defense is a valid defense to crimes based on reckless conduct as well as intentional conduct." *State v. Jones*, 39 Conn. App. 563, 567 n.4 (1995); see also *State v. Hall*, 213 Conn. 579, 586 (1990); *State v. King*, 24 Conn. App. 586, 590-91, cert. denied, 219 Conn. 912 (1991).

As a matter of law, self-defense is not available as a defense to a charge of felony murder. *State v. Amado*, 254 Conn. 184, 197-202 (2000); *State v. Burke*, 254 Conn. 202, 205 (2000). This holding is "consistent with the purpose underlying felony murder, which is to punish those whose conduct brought about an unintended death in the commission or attempted commission of a felony. . . . The felony murder rule includes accidental, unintended deaths. Indeed, we have noted that crimes against the person like robbery, rape and common-law arson and burglary are, in common experience, likely to involve danger to life in the event of resistance by the victim. . . . Accordingly, when one kills in the commission of a felony, that person cannot claim self-defense, for this would be fundamentally inconsistent with the very purpose of the felony murder [statute]." (Citations omitted; internal quotation marks omitted.) *State v. Amado*, supra, 254 Conn. 201.

Self-defense is not applicable to "status offenses," such as carrying a dangerous weapon; *State v. Holloway*, 11 Conn. App. 665, 771 (1987); or carrying a pistol without a permit. *State v. Bailey*, 209 Conn. 322, 238 (1988). But see *State v. Ramos*, 271 Conn. 785, 803 (2004) ("when the item that the defendant is charged with having in the vehicle is an otherwise legal item and did not become a dangerous instrument within the meaning of § 29-38 until it was used in self-defense, the defendant may raise § 53a-19 as a defense").

When a defendant is charged with multiple offenses, only some of which self-defense may apply to, the instruction must clearly state that self defense does not apply to all of the offenses. *State v. Davis*, 261 Conn. 553, 573 (2002) (self-defense did not apply to charge of interference with an officer, but would apply to assault charges arising out of the same conduct); *State v. Wright*, 77 Conn. App. 80, 86-87, cert. denied, 266 Conn. 913 (2003) (self-defense did not apply to count charging defendant as accessory).

Whether a person claiming defense of a third party has a duty to retreat depends on whether the person being defended has a duty to retreat. *State v. Rodriguez*, 47 Conn. App. 91, 96, cert. denied, 243 Conn. 960 (1997).

## 2.8-2 Exceptions to Justification: Provocation, Initial Aggressor, Combat by Agreement -- § 53a-19

(c)

Revised to December 1, 2007 (modified November 17, 2015)

In addition, the state can defeat the defendant's claim of self-defense by proving one of the statutory disqualifications to self-defense. The statute defining self-defense describes certain circumstances in which a person is not justified in using any degree of physical force in self-defense against another.

<Include as appropriate:>

- A. Provocation
- B. Initial Aggressor
- C. Combat by Agreement

### A. Provocation – § 53a-19 (c) (1)

(One such / Another) circumstance under which a person is not justified in using any degree of physical force in self-defense against another is when (he/she) provokes the other person to use physical force against (him/her).

In order to provoke the use of physical force by another, it is not enough that the defendant by (his/her) conduct elicited the use of physical force by another; rather the defendant must have embarked upon such conduct with the specific intent to provoke the other into using physical force and intending to cause the other physical injury or death.

The defendant must have specifically intended to provoke another into using physical force, and then used force to defend (himself/herself) from the ensuing use of force by the person provoked.

It is important to remember that the defendant has no burden whatsoever to prove that (he/she) did not provoke <insert name of decedent/complainant> into using physical force against (him/her). To the contrary, you may only reject (his/her) defense on the basis of this statutory disqualification if you find that the state has proved beyond a reasonable doubt that the defendant provoked the use of physical force by <insert name of decedent/complainant> against (him/her).

### B. Initial aggressor – § 53a-19 (c) (2)

(One such / Another) circumstance under which a person is not justified in using any degree of physical force in self-defense against another is when (he/she) is the initial aggressor in the encounter with the other person, and does not both withdraw from the encounter and effectively communicate (his/her) intent to do so before using the physical force at issue in the case.

Under this provision, the state can prove that the defendant was not justified in using physical force in self-defense by proving beyond a reasonable doubt that (he/she) was the initial aggressor in (his/her) encounter with <insert name of other person> and that (he/she) neither withdrew

from that encounter nor effectively communicated (his/her) intent to do so before using physical force against *<insert name of other person>*.

To prove that the defendant was the initial aggressor in (his/her) encounter with *<insert name of other person>*, the state need not prove that the defendant was the first person to use physical force in that encounter. The initial aggressor can be the first person who threatened to use physical force, or even the first person who appeared to threaten the imminent use of physical force under circumstances.

To prove that the defendant did not withdraw and communicate (his/her) intent to do so, the state must prove that (he/she) did not abandon the conflict in such a way that the fact of (his/her) withdrawal was perceived by *<insert name of other person>* so that *<insert name of other person>* was aware that there was no longer any danger from the original aggression.

It is important to remember that the defendant has no burden whatsoever to prove that (he/she) was not the initial aggressor or that (he/she) withdrew from the encounter and communicated (his/her) intent to do so before (he/she) used physical force against *<insert name of other person>*. To the contrary, you may only reject (his/her) defense on the basis of this statutory disqualification if you find that the state has proved beyond a reasonable doubt that (he/she) was the initial aggressor, did not withdraw from the encounter, and did not communicate (his/her) intent to withdraw before using physical force.

### **C. Combat by agreement – § 53a-19 (c) (3)**

(One such / Another) circumstance under which a person is not justified in using any degree of physical force in self-defense against another is when the physical force is the product of an illegal combat by agreement.

Under this provision, it is not necessary that there be a formal agreement – such an agreement may be inferred from the conduct of the parties. To infer such an agreement you must look at all the circumstances leading up to and preceding the event in question as well as all of the circumstances surrounding this event itself based on the entire evidence presented and your own credibility assessments.

[*<Include if the facts warrant:>* This exception would not apply despite an agreement for mutual combat if you further find that its terms were violated by *<insert name of complainant/decedent>* and that (his/her) conduct toward the defendant was in violation of their agreement, and further that the defendant knew of such violation. Violation means that *<insert name of complainant/decedent>*'s use of force exceeded the terms of the agreement with the defendant, and that it escalated beyond what had been agreed to as to either the extent or form of combat.]<sup>1</sup>

It is important to remember that the defendant has no burden whatsoever to prove that (his/her) use of physical force was not the product of a combat by agreement. To the contrary, you may only reject (his/her) defense on the basis of this statutory disqualification if you find that the state has proved beyond a reasonable doubt that the defendant and *<insert name of other alleged combatant(s)>* had engaged in combat by agreement.

---

<sup>1</sup> See *State v. O'Bryan*, 318 Conn. 621, 642 (2015). The jury must find that the defendant, in fact, knew that the other person had violated the terms of the agreement, not simply that he or she reasonably believed so. *Id.*, 644.

### ***Commentary***

The exceptions to justification in § 53a-19 (c) serve to negate justification because they involve factual circumstances that disprove that the defendant was acting defensively, and apply to all claims of defense or defense of others, regardless of the degree of force used. See *State v. Silveira*, 198 Conn. 454, 470 (1986).

### ***Provocation***

In order to provoke the use of physical force by another, it is not enough that the defendant by his or her conduct elicited the use of physical force by another; rather the defendant must have embarked upon such conduct with the specific intent to provoke the other into using physical force and intending to cause the other physical injury or death. See *State v. Hawkins*, 19 Conn. App. 609, 616, cert. denied, 212 Conn. 820 (1989). Section 53a-19 (c) (1) also applies to the situation in which the defendant, intending to harm the victim by retaliation, intentionally provokes the victim into using physical force against the defendant by attacking a third party. *Id.*, 617.

### ***Initial Aggressor***

There is no legal definition of "initial aggressor," so it is proper to instruct the jury to apply the ordinary meaning of the words. *State v. Ramos*, 261 Conn. 156, 164-69 (2002); *State v. Whitford*, 260 Conn. 610, 620-24 (2002).

It is improper to define "initial aggressor" simply as the first person to use force. *State v. Jimenez*, 228 Conn. 335, 341 (1994) (such an instruction forecloses the jury from considering the claim of self-defense at all). In *State v. Corchado*, 188 Conn. 653, 666-68 (1982), the court included "directed verdict" language in defining the "initial aggressor" as one who makes "any direct personal assault . . . in anger" or one who "deliberately places himself in a position where he has reason to believe his presence would provoke trouble" or as one who "leaves a quarrel to go to his home to arm himself, and then returns to the scene of the quarrel and kills the other person."

### ***Withdrawal***

An initial aggressor is justified in using physical force if "he withdraws from the encounter and effectively communicates to such other person his intent to do so, but such other person notwithstanding continues or threatens the use of physical force." General Statutes § 53a-19 (c) (2). "An instruction as to the effect of an aggressor withdrawing from an encounter and communicating the intent to withdraw is only necessary where the particular factual situation supports such an instruction." *State v. Diggs*, 219 Conn. 295, 299 (1991). Further, the aggressor's intent to withdraw must clearly be made known to his or her victim in order to invoke the doctrine of communicated withdrawal. *Id.* In other words, the initial aggressor must withdraw or abandon the conflict in such a way that the fact of withdrawal is perceived by his or

her opponent, so that the opponent is aware that he or she is no longer in any danger from the original aggressor. *State v. Cartagena*, 47 Conn. App. 317, 321 (1997), cert. denied, 244 Conn. 904 (1998).

***Combat by agreement***

The agreement need not be formal or express, as long as there is any evidence to support a reasonable inference that the participants agreed, either expressly or impliedly, to engage in combat. *State v. Silveira*, 198 Conn. 454, 471 (1986); *State v. Johnson*, 53 Conn. App. 476, 480-82, cert. denied, 249 Conn. 929 (1999).

## 2.8-3 Exceptions to Use of Deadly Physical Force: Duty to Retreat, Surrender Property, Comply with Demand -- § 53a-19 (b)

Revised to December 1, 2007

In addition, the state can defeat the defendant's claim of self-defense by proving one of the statutory disqualifications to the use of deadly physical force. The statute defining self-defense describes certain circumstances in which a person is not justified in using deadly physical force in self-defense against another. These exceptions apply only to the use of deadly force, so if you have found that the defendant used deadly physical force, you must consider these exceptions.

<Include as appropriate:>

- A. Duty to retreat
- B. Surrender property
- C. Comply with demand

### A. Duty to retreat § 53a-19 (b) (1)

(One such / Another) circumstance is that a person is not justified in using deadly physical force upon another person if (he/she) knows that (he/she) can avoid the necessity of using such force with complete safety by retreating. This disqualification requires a defendant to retreat instead of using deadly physical force whenever two conditions are met: 1) a completely safe retreat is in fact available to (him/her); and 2) (he/she) knows that (he/she) can avoid the necessity of using deadly physical force by making that completely safe retreat. The law stresses that self-defense cannot be retaliatory. It must be defensive and not punitive.

The term "complete safety," as used in this statute, means without any injury to the defendant whatsoever. A person acts "knowingly" with respect to a circumstance described in a statute when (he/she) is aware that such circumstance exists. <See Knowledge, Instruction 2.3-3.>

It is important to remember that the defendant has no burden whatsoever to prove that (he/she) could not have retreated with complete safety or that (he/she) didn't know that a safe retreat was possible before (he/she) used physical force against <insert name of other person>. To the contrary, you may only reject (his/her) defense on the basis of this statutory disqualification if you find that the state has proved beyond a reasonable doubt that (he/she) did know that (he/she) could retreat with complete safety.

### Exception for dwelling<sup>1</sup>

As a general rule, a defendant is not required to retreat in (his/her) own dwelling before (he/she) may use force. A dwelling is defined in our law as a place which is usually occupied by a person lodging therein at night. "Usually occupied" means customary or routine nightly occupancy. Thus, occupation for some period of time is required. In considering whether a house is the defendant's dwelling, consider evidence such as where the defendant's clothes and personal effects were kept.<sup>2</sup>

[<If the case involves a question of co-dwellers:> To this general rule there is an exception which you may or may not apply here, which is for you to determine as a question of fact. That exception is that one claiming self-defense in (his/her) own dwelling has the duty to retreat from a co-dweller before (he/she) may employ force against that co-dweller. A co-dweller is a person who also is usually lodged in those premises at night.

Accordingly, you must first determine if the state has proved that <insert name of other person> was a co-dweller with the defendant at <insert location>. If the state has failed to prove that <insert name of other person> was a co-dweller, then you go no further on this issue as the defendant would have no duty to retreat. If, however, you find that the state has proved that <insert name of other person> was a co-dweller with the defendant, you would then consider whether the defendant had a duty to retreat in accordance with the previously stated rule that a person must retreat before using deadly physical force if (he/she) knows that (he/she) can retreat with complete safety.

If you find that the state has proved beyond a reasonable doubt that the defendant and <insert name of other person> were co-dwellers and that a retreat with complete safety was available to the defendant and that the defendant knew it, but did not retreat, you shall then find that the state has proved beyond a reasonable doubt that the defendant was not justified in using deadly force.]

**B. Surrender property § 53a-19 (b) (2)**

(One such / Another) circumstance under which a person is not justified in using deadly physical force in self-defense against another is when (he/she) knows that (he/she) can avoid the use of physical force with complete safety by surrendering an object of personal property to the assailant.

Under this provision, if the assailant's conduct appears motivated by (his/her) claim to property that the defendant possesses and the defendant knows that if (he/she) surrendered the property that the assailant would cease the assault upon the defendant, then the defendant may not use deadly physical force in defense and must surrender the property.

It is important to remember that the defendant has no burden whatsoever to prove that (he/she) knew that <insert name of assailant> would cease the assault upon the defendant if the defendant surrendered <insert property in question>. To the contrary, you may only reject (his/her) defense on the basis of this statutory disqualification if you find that the state has proved beyond a reasonable doubt that the defendant knew that <insert name of assailant> would flee without harming (him/her) if (he/she) surrendered <insert property in question>.

**C. Comply with demand § 53a-19 (b) (3)**

(One such / Another) circumstance under which a person is not justified in using deadly physical force in self-defense against another is when (he/she) knows that (he/she) can avoid the necessity of using such force with complete safety by complying with a demand that (he/she) abstain from performing an act which (he/she) is not obliged to perform.

Under this provision, if <insert name of assailant>'s conduct appears motivated by (his/her) insistence that the defendant stop <insert defendant's conduct in question> and the defendant was not obliged to <insert defendant's conduct in question> and the defendant knew that <insert name of assailant> would cease (his/her) use of physical force against the defendant, then the defendant may not use deadly physical force in self-defense and must comply with the demand.

It is important to remember that the defendant has no burden whatsoever to prove that (he/she) knew (he/she) would no longer be in danger from <insert name of assailant> if the defendant stopped <insert defendant's conduct in question>. To the contrary, you may only reject the defense on the basis of this statutory disqualification if you find that the state has proved beyond a reasonable doubt that the defendant knew that if (he/she) complied with the demands of <insert name of assailant> then (he/she) would have no need to defend (himself/herself).

---

<sup>1</sup> See *State v. James*, 54 Conn. App. 26, 32-26 (1999).

<sup>2</sup> See *State v. Prankus*, 75 Conn. App. 80, 92 (2003).

### ***Commentary***

General Statutes § 53a-19 (b) applies only to the use of deadly physical force. A person is not limited by these requirements before using nondeadly physical force in self-defense. See *State v. Anderson*, 227 Conn. 518, 529 (1993) (one who can safely retreat is not required to do so before using nondeadly force).

### ***Knowledge of complete safety***

The statute requires that the person must know that he or she can avoid the necessity of using deadly physical force with complete safety. *State v. Quintana*, 209 Conn. 34, 46 (1988). It is reversible error to fail to include the word "complete" before "safety." *State v. Anderson*, 227 Conn. 525, 532 (1993); see also *State v. Byrd*, 34 Conn. App. 368, 374-77, aff'd, 239 Conn. 405 (1996).

"A charge on the duty to retreat is flawed if it fails to instruct the jury to consider the subjective component of the duty to retreat: the defendant's knowledge of his ability to retreat." (Internal quotation marks omitted.) *State v. Montanez*, 71 Conn. App. 246, 263 (2002). The correct measure of a person's knowledge of the ability to retreat in complete safety is "the subjective standard of the defendant's actual knowledge." *State v. Ash*, 231 Conn. 484, 495 (1994); *State v. Amado*, 254 Conn. 184, 195-97 (2000).

### ***Duty to retreat***

"Connecticut is among a minority of jurisdictions . . . that has followed the position advanced by the Model Penal Code that, before using deadly force in self-defense, an individual must retreat." *State v. Anderson*, 227 Conn. 518, 530 (1993). The statutory provision requiring retreat in lieu of deadly force replaces common-law rules. See *State v. Byrd*, 233 Conn. 517 (1995). The trial court need not instruct the jury on the duty to retreat if the state does not claim that the defendant should have retreated. *State v. Lemoine*, 256 Conn. 193, 200 (2001).

The statute provides three exceptions to the duty to retreat.

### 1. Dwelling

A person is not required to retreat if in his or her own home or dwelling. "[T]he dwelling exception to the duty to retreat rule does not encompass the common areas of the defendant's apartment building such as stairways, hallways and foyers." *State v. Silva*, 43 Conn. App. 488, 493-94 (1996); *State v. Rodriguez*, 47 Conn. App. 91, 96 (1997).

Section 53a-19 incorporates the definition of dwelling in 53a-100, which is "a building which is usually occupied by a person lodging therein at night." This definition "contemplates a duration element by requiring usual inhabitation at night. Usual in this context obviously means customary or routine occupancy . . . in short, occupation for period of duration." *State v. Bailey*, 209 Conn. 322, 343 (1988); see also *State v. Adams*, 52 Conn. App. 643, 649 (1999) (trial court's instruction that in determining whether it was the victim's dwelling "at or about the time in question" did not materially alter the statutory definition of dwelling).

The co-dweller retreat rule was adopted from the Restatement (Second), Torts § 65 (1965) in *State v. Shaw*, 185 Conn. 372, 279 (1981), cert. denied, 454 U.S. 1155, 102 S.Ct. 1027, 71 L.Ed.2d 312 (1982). A person is required to retreat when in his or her own dwelling when threatened by another who dwells in the same place. The status of the other person as a co-dweller is a question for the jury. See *State v. James*, 54 Conn. App. 26, 37 (1999).

### 2. Workplace

A person is not required to retreat if he or she is in his or her place of work and was not the initial aggressor. The right to use deadly force in one's workplace was recognized at common law. See *State v. Feltovic*, 110 Conn. 303, 311-12 (1929).

### 3. Peace officer

A peace officer or a private person assisting such officer at his direction, acting pursuant to § 53a-22, is not required to retreat.

### ***Surrendering property***

The instruction must convey the person's knowledge that the assailant *would* flee if that person surrendered the property sought. *State v. Schiavo*, 93 Conn. App. 290, 296-99 (2006) (court improperly substituted "could" in one part of the charge).

"A person is not permitted to use deadly physical force in self-defense just because that person reasonably believed that the victim was attempting to rob that person." *State v. Harrison*, 32 Conn. App. 687, 694, cert. denied, 227 Conn. 932 (1993); see also *State v. Byrd*, 34 Conn. App. 368, aff'd, 239 Conn. 405 (1996) (deadly force is not allowed if person can retreat in complete safety or avoid harm by surrendering property).

## 2.8-4 Defense of Premises -- § 53a-20

Revised to November 17, 2015

The evidence in this case raises the issue of the defense of premises. This defense applies to the charge[s] of *<insert applicable crimes>* [and the lesser included offense[s] of *<insert lesser included offenses>*.]

After you have considered all of the evidence in this case, if you find that the state has proved beyond a reasonable doubt each element of *<insert applicable crimes any lesser included offenses>*, you must go on to consider whether or not the defendant acted justifiably in the defense of premises. In this case you must consider this defense in connection with count[s] \_\_\_ of the information.

A person is justified in the use of force against another person that would otherwise be illegal if (he/she) is acting in the defense of premises. It is a complete defense to certain crimes, including *<insert applicable crimes and any lesser included offenses>*. When, as in this case, evidence that the defendant's actions were in defense of premises is introduced at trial, the state must not only prove beyond a reasonable doubt all the elements of the crime charged to obtain a conviction, but must also disprove beyond a reasonable doubt that the defendant acted in defense of premises. If the state fails to disprove beyond a reasonable doubt that the defendant acted in defense of premises in accordance with my instructions, you must find the defendant not guilty of *<insert applicable crimes and any lesser included offenses>* despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt. The defendant has no burden of proof whatsoever with respect to this defense.

The statute defining this defense reads in pertinent part as follows:

a person in possession or control of premises, or a person who is licensed or privileged to be in or upon such premises, is justified in using reasonable physical force upon another person when and to the extent that (he/she) reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of a criminal trespass by such other person in or upon such premises.

The term "premises" is generally defined as any real estate or building or any structure or vehicle or watercraft used for lodging persons overnight or for carrying on a business. [When a building consists of separate units, such as apartments or offices, each unit is a separate premises.]

To convict the defendant of *<insert applicable crimes>*, the state must disprove beyond a reasonable doubt one of the following elements:

### **Element 1 - Right to defend premises**

The first element is that the defendant had possession or control of the premises. The right to defend premises does not apply to everyone, but only to persons in possession or control of such premises, or persons privileged to be there, such as visitors or guests of the owner. The state can disprove this element by proving that the defendant was not in control of the premises or otherwise licensed or privileged to be there.

**Element 2 - From a criminal trespass**

The second element is that *<insert name of decedent/complainant>* was criminally trespassing on the premises. The right to defend premises does not allow the use of physical force every time someone enters those premises without consent. For example, force may not be used against someone who enters the premises merely by accident or mistake. Rather, physical force may be used only to prevent an actual or attempted criminal trespass. *<Instruct according to the type of criminal trespass that the facts support.>*<sup>1</sup>

**Element 3 - Actual belief that force was necessary**

The third element is that the defendant actually -- that is, honestly and sincerely -- believed that *<insert name of decedent/complainant>* was trespassing on the premises at *<identify location of premises>* and was refusing to leave after having been asked to. The defendant must have actually believed that the use of physical force was necessary to terminate the trespass.

"Physical force" means actual physical force or violence or superior physical strength. Physical force may not be used, however, if it reasonably appears that the trespasser is leaving or about to flee, nor may it be used once the trespasser has left the premises, for this would no longer be defensive force, but rather retaliatory and unlawful force.<sup>2</sup>

**Element 4 - Reasonableness of that belief**

The fourth element is that the defendant's belief was reasonable, and not irrational or unreasonable under the circumstances. You must ask whether a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared the belief. In other words, was the defendant's belief that the use of physical force was necessary to prevent or terminate the criminal trespass of *<insert name of decedent/complainant>* reasonable under the circumstances.

**[Deadly physical force**

*<If the state is claiming that the defendant used deadly physical force:>*

The defense of premises against a criminal trespasser allows only the use of reasonable physical force. The law distinguishes physical force from deadly physical force, and allows the use of deadly physical force only in limited circumstances.<sup>3</sup> The state is claiming that the physical force used by the defendant to defend the premises against the criminal trespass of *<insert name of decedent/complainant>* was deadly physical force.

"Physical force" means actual physical force or violence or superior physical strength. The term "deadly physical force" is defined by statute as physical force which can reasonably be expected to cause death or serious physical injury. Under this definition, the physical force used by the defendant need not actually have caused a death or a serious physical injury in order to be considered deadly physical force, nor need it have been expected or intended by the defendant to result in such serious consequences. Instead, what determines whether the defendant used deadly physical force is whether the force actually used by the defendant could reasonably have been expected to cause death or serious physical injury. "Physical injury" is defined by statute as impairment of physical condition or pain, and "serious physical injury" is defined as physical

injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ.

It is up to you to determine whether the defendant used deadly physical force or non-deadly physical force against *<insert name of the other person>*. You are to make that determination after considering all the evidence. If the state claims that the defendant used deadly physical force, the state must prove that beyond a reasonable doubt.

[*<Include as warranted by evidence:>* Deadly physical force may be used in defense of premises in specific circumstances.

- A person may use deadly physical force in defense of premises in order to prevent an attempt<sup>4</sup> by the trespasser to commit (arson / a crime of violence).<sup>5</sup> *<Insert appropriate definition:>*
  - Arson is the reckless causation of damage to a building by intentionally starting a fire or causing an explosion.
  - In the context of this defense, a crime of violence refers to burglary, which is the unlawful entering or remaining in a building with the intent to commit another crime.
- A person may use deadly physical force when (he/she) reasonably believes that deadly physical force is necessary to prevent or end a forcible unlawful entry into (his/her) dwelling or place of work, and for the sole purpose of such prevention or termination. [Dwelling means a building which is usually occupied by a person at night, whether or not that person is actually present.]

Deadly physical force is allowed in (this / these) situation[s] even when the person has no fear that (he/she) will be harmed by the trespasser, unless the state proves beyond a reasonable doubt that the circumstances in question did not occur.]

### **Conclusion**

You must remember that the defendant has no burden of proof whatsoever with respect to this defense. Instead, it is the state that must disprove beyond a reasonable doubt that the defendant acted in the defense of premises if it is to prevail on its charge[s] of *<insert applicable crimes>*[, or of any of the lesser-included offenses on which you have been instructed]. The state need not disprove all of the elements of the defense of premises. Instead, it can defeat the defense by disproving any part of defense of premises beyond a reasonable doubt to your unanimous satisfaction.

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of *<insert applicable crimes>*, you shall then find the defendant not guilty and not consider the defense.

If you unanimously find that all the elements of *<insert applicable crimes and any lesser included offenses>* have been proved beyond a reasonable doubt, you shall then consider the defense of premises. If you unanimously find that the state has disproved beyond a reasonable doubt at least one of the elements of the defense, you must reject that defense and find the defendant guilty.

If, on the other hand, you unanimously find that the state has not disproved beyond a reasonable doubt at least one of the elements of the defense, then on the strength of that defense alone you must find the defendant not guilty of <insert applicable crimes> despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt [and not consider any of the lesser-included offenses].

---

<sup>1</sup> General Statutes §§ 53a-107, 53a-108, and 53a-109 define criminal trespassing. The defendant's request for an instruction on this defense should specify the degree of criminal trespass that he or she is claiming occurred. If the elements of some degree of criminal trespass are not present, then this defense does not apply. See *State v. Brunette*, 92 Conn. App. 440, 448-49 (2005).

<sup>2</sup> *State v. Ghiloni*, 35 Conn. Sup. 570 (App. Sess. 1979), cert. denied, 175 Conn. 758 (1978); see also *State v. Taxiltaridis*, 2 Conn. App. 617, 619-20 (1984).

<sup>3</sup> Section 53a-20 (1) also permits a person to use deadly physical force "in defense of a person as prescribed in section 53a-19." In such a case, the defense would not be defense of premises, but defense of person. See Self-Defense and Defense of Others, Instruction 2.8-1, and Duty to Retreat, Instruction 2.8-3.

<sup>4</sup> The existing statutory scheme allows deadly force to protect premises against attempted arson. Criminal attempt is defined at General Statutes § 53a-49, arson at General Statutes §§ 53a-111 through 53a-113. Under this statutory scheme, therefore, one may justifiably use deadly force against someone in the act of setting a fire in violation of our arson statutes, but not one second after the blaze has begun. This result, while at first glance anomalous, is consistent with the law of self-defense, which allows deadly force only to prevent death or serious bodily injury, or to prevent a forcible entry into or a violent felony within a dwelling. Any other interpretation would result in a retaliatory and unlawful use of force.

<sup>5</sup> The term "crime of violence," in the context of § 53a-19, "involves only those offenses which fall within the traditional common-law definition and do not, by their essential elements, necessarily involve the use of deadly force or infliction of great bodily harm." *State v. Terwilliger*, 314 Conn. 618, 661-62 (2014). "Only the crimes of arson and burglary fall within that definition." *Id.*, 662.

#### ***Commentary***

In order for this defense to apply, the defendant would have had to be privileged to be on the premises, and the victim would have had to be a criminal trespasser. *State v. Garrison*, 203 Conn. 466, 472 (1987).

A person defending his or her dwelling or place of work does not have a duty to retreat before using deadly physical force. *State v. Amado*, 254 Conn. 184, 196-97 (2000). This is consistent with the exception from the duty to retreat from one's dwelling when confronted with deadly physical force.

## 2.8-5 Defense of Personal Property -- § 53a-21

Revised to December 1, 2007 (modified November 17, 2015)

The evidence in this case raises the issue of the use of force against another to defend personal property. This defense applies to the charge[s] of *<insert applicable crimes>* [and the lesser included offense[s] of *<insert lesser included offenses>*.]

After you have considered all of the evidence in this case, if you find that the state has proved each element of *<insert applicable crimes and any lesser-included offenses>*, you must go on to consider whether or not the defendant acted justifiably in the defense of personal property. In this case you must consider this defense in connection with count[s] \_\_\_ of the information.

A person is justified in the use of force against another person that would otherwise be illegal if (he/she) is acting in the defense of personal property. It is a complete defense to certain crimes, including *<insert applicable crimes and any lesser included offenses>*. When, as in this case, evidence that the defendant's actions were in defense of personal property is introduced at trial, the state must not only prove beyond a reasonable doubt all the elements of the crime charged to obtain a conviction, but must also disprove beyond a reasonable doubt that the defendant acted in defense of personal property. If the state fails to disprove beyond a reasonable doubt that the defendant acted in defense of personal property in accordance with my instructions, you must find the defendant not guilty of *<insert applicable crimes and any lesser included offenses>* despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt. The defendant has no burden of proof whatsoever with respect to (his/her) defense.

The statute defining this defense reads in pertinent part as follows:

a person is justified in using reasonable physical force<sup>1</sup> upon another person when and to the extent that (he/she) reasonably believes such to be necessary to *<insert as appropriate:>*

- prevent an attempt by such other person to commit (larceny / criminal mischief involving property).
- regain property that (he/she) reasonably believes to have been acquired by larceny within a reasonable time prior to the use of such force.

To convict the defendant of *<insert applicable crimes>*, the state must disprove beyond a reasonable doubt one of the following elements:

*<Select either A. or B. depending on the evidence supporting the defense:>*

### **A. TO PREVENT A LARCENY OR CRIMINAL MISCHIEF INVOLVING PROPERTY**

#### **Element 1 - Prevented larceny or criminal mischief**

The first element is that the defendant was preventing another person, *<insert name of other person>*, from committing (larceny / criminal mischief involving property). *<Insert as appropriate:>*

- Larceny is the wrongful taking of the property of another with the specific intent to keep it for (himself/herself) or a third person. *<Instruct according to the type of larceny that the facts support.>*<sup>2</sup>
- Criminal mischief involving property is when a person, knowing (he/she) has no right to do so, intentionally damages tangible property of another.<sup>3</sup>

The property could belong to the defendant or to any other person for purposes of this defense.

**Element 2 - Actual belief that force was necessary**

The second element is that the defendant actually -- that is, honestly and sincerely - believed that *<insert name of decedent/complainant>* was committing (larceny / criminal mischief involving property) and that physical force was necessary to prevent the completion of the crime.

"Physical force" means actual physical force or violence or superior physical strength. Physical force may not be used, however, if it reasonably appears that the perpetrator was ceasing the criminal act, for this would no longer be defensive force, but rather retaliatory and unlawful force.

**Element 3 - Reasonableness of the belief**

The third element is that the defendant's belief that physical force was necessary was a reasonable belief. That is, would a reasonable person in the defendant's circumstances at the time of (his/her) actions, viewing those circumstances from the defendant's point of view, have shared that belief? It may not have been actually necessary to use force, but if the defendant reasonably believed that force was necessary in order to regain the property, then such force was justified.

**Conclusion**

You must remember that the defendant has no burden of proof whatsoever with respect to this defense. Instead, it is the state that must disprove beyond a reasonable doubt that the defendant acted in the defense of property if it is to prevail on its charge[s] of *<insert applicable crimes>*[, or of any of the lesser-included offenses on which you have been instructed]. The state need not disprove all of the elements of the defense of property. Instead, it can defeat the defense by disproving any one of the elements of defense of property beyond a reasonable doubt to your unanimous satisfaction.

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of *<insert applicable crimes>*, you shall then find the defendant not guilty and not consider the defense.

If you unanimously find that all the elements of *<insert applicable crimes and any lesser included offenses>* have been proved beyond a reasonable doubt, you shall then consider the defense of personal property. If you unanimously find that the state has disproved beyond a reasonable doubt at least one of the elements of the defense, you must reject that defense and find the defendant guilty.

If, on the other hand, you unanimously find that the state has not disproved beyond a reasonable doubt at least one of the elements of the defense, then on the strength of that defense alone you

must find the defendant not guilty of *<insert applicable crimes>* despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt [and not consider any of the lesser-included offenses].

## **B. TO REGAIN PROPERTY WRONGFULLY TAKEN OR WITHHELD BY ANOTHER**

### **Element 1 - Regain property recently and wrongfully taken**

The first element is that the defendant was using force in order to regain property that (he/she) believed was wrongfully taken or withheld by someone. The property could belong to the defendant or to any other person for purposes of this defense.

Furthermore, this use of force must occur within a reasonably short time after the perceived larceny or damage occurred. There is no fixed time limit in which the defendant must act; rather, it is up to you to determine what was reasonable in light of all the existing circumstances. The use of reasonable physical force may be justified when only a short time has passed. However, the more time has passed since the perceived larceny or damage, the less reasonable the use of force will be. Whether the amount of time passed is reasonable is a question of fact for you to determine given the evidence in the case.

The property in question need not have been actually taken or withheld; indeed, it may rightfully have belonged to the other person.

### **Element 2 - Actual belief that force was necessary**

The second element is that the defendant believed that physical force was necessary to regain the property. You must ask whether the defendant actually -- that is, honestly and sincerely -- believed that physical force was necessary to regain the property. "Physical force" means actual physical force or violence or superior physical strength. A person must only use as much force as is reasonably necessary to recover the property. (He/She) may not use force to inflict punishment or vengeance. Also, (he/she) may not unnecessarily wound the other person, or use a dangerous weapon.

### **Element 3 - Reasonableness of belief**

The third element is that the defendant's belief that physical force was necessary was a reasonable belief. That is, would a reasonable person in the defendant's circumstances at the time of (his/her) actions, viewing those circumstances from the defendant's point of view, have shared that belief? It may not have been actually necessary to use force, but if the defendant reasonably believed that force was necessary in order to regain the property, then such force was justified.

### **Conclusion**

You must remember that the defendant has no burden of proof whatsoever with respect to this defense. Instead, it is the state that must disprove beyond a reasonable doubt that the defendant acted on a reasonable belief that physical force was necessary to regain the property if it is to prevail on its charge[s] of *<insert applicable crimes>* [, or of any of the lesser-included offenses on which you have been instructed and deliberated]. The state need not disprove a]ll of the

elements of the defense of property. Instead, it can defeat the defense by disproving any one of the elements of defense of property beyond a reasonable doubt to your unanimous satisfaction.

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of <insert applicable crimes>, you shall then find the defendant not guilty and not consider the defense.

If you unanimously find that all the elements of <insert applicable crimes and any lesser included offenses> have been proved beyond a reasonable doubt, you shall then consider the defense of personal property. If you unanimously find that the state has disproved beyond a reasonable doubt at least one of the elements of the defense, you must reject that defense and find the defendant guilty.

If, on the other hand, you unanimously find that the state has not disproved beyond a reasonable doubt at least one of the elements of the defense, then on the strength of that defense alone you must find the defendant not guilty of <insert applicable crimes> despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt [and not consider any of the lesser-included offenses].

---

<sup>1</sup> The statute limits the use of this defense to reasonable force, expressly stating that a person "may use deadly physical force under such circumstances only in defense of person as prescribed in section 53a-19." A defendant is thus not entitled to a charge on defense of personal property if deadly physical force was used. See *State v. Weber*, 31 Conn. App. 58, 68-73, cert. denied, 226 Conn. 908 (1993). See Self-Defense and Defense of Others, Instruction 2.8-1, particularly the requirement that a person confronted with deadly physical force must surrender property if he or she knows that the attacker would then flee.

<sup>2</sup> General Statutes §§ 53a-122 -- 53a-125b define larceny. The defendant's request for an instruction on this defense should specify the degree of larceny that he or she is claiming occurred. If the elements of some degree of larceny are not present, then this defense does not apply. See *State v. Brunette*, 92 Conn. App. 440, 448-49 (2005) (discussing criminal trespass and the defense of premises).

<sup>3</sup> General Statutes §§ 53a-115 -- 53a-117a define criminal mischief. See footnote 2.

### ***Commentary***

"A person is not permitted to use deadly physical force in self-defense just because that person reasonably believed that the victim was attempting to rob that person." *State v. Harrison*, 32 Conn. App. 687, 694, cert. denied, 227 Conn. 932 (1993); see also *State v. Byrd*, 34 Conn. App. 368, aff'd, 239 Conn. 405 (1996) (deadly force is not allowed if person can retreat in complete safety or avoid harm by surrendering property).

See generally *State v. Anonymous* (1977-9), 34 Conn. Sup. 612, 615-18 (App. Sess. 1977) (minimal facts supported defendant's request to instruct on defense of personal property).

"Although one may be privileged to enter another's property to retrieve his goods, the act must be reasonable, and burglary is an unreasonable act even if the occupant of that house had

stolen items from the defendant." *State v. Gelormino*, 24 Conn. App. 563, 571, cert. denied, 219 Conn. 911 (1991).

## 2.8-6 Use of Physical Force by Peace Officer in Making Arrest or Preventing Escape -- § 53a-22 (c)

Revised to December 1, 2007

**Note:** This defense applies when a peace officer has been charged with an offense arising out of the alleged use of excessive force, and this instruction is written for that situation. The statute also comes into play when a defendant is charged with § 53a-167a (Interfering with an Officer) or § 53a-167c (Assault on Public Safety or Emergency Medical Personnel) in determining the scope of the officer's duties. See Interfering with an Officer, Instruction 4.3-1, and Assault of Public Safety or Emergency Medical Personnel, Instruction 4.3-3, in which portions of this instruction have been incorporated.

This statute also applies when a peace officer is claiming self-defense to charges arising out of an incident when the officer was attempting to make an arrest or prevent an escape. In that case, the self-defense instruction as written for § 53a-19 may be used, changing the "reasonable person" standard to the "reasonable peace officer" standard. See *State v. Smith*, 73 Conn. 173, 205 (2002). See Self-Defense and Defense of Others, Instruction 2.8-1.

The evidence in this case raises the defense that the defendant was justified in the use of physical force because (he/she) was (making an arrest / preventing an escape). This defense applies to the charge[s] of *<insert applicable crimes>* [and the lesser included offense[s] of *<insert lesser included offenses>*.]

After you have considered all of the evidence in this case, if you find that the state has proved each element of *<insert applicable crimes and any lesser-included offenses>*, you must go on to consider whether or not the defendant was justified in (his/her) use of force.

When, as in this case, evidence of justification is introduced at trial, the state must not only prove beyond a reasonable doubt all the elements of the crime charged to obtain a conviction, but must also disprove beyond a reasonable doubt that the defendant was justified in (his/her) use of force. If the state fails to disprove beyond a reasonable doubt that the defendant was not justified, you must find the defendant not guilty of *<insert applicable crimes and any lesser-included offenses>* despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt. The defendant has no burden of proof whatsoever with respect to the defense of justification.

The law allows a peace officer to use force to (make an arrest / prevent an escape). Peace officers have a duty to prevent crimes and apprehend persons alleged or believed to have committed a crime. The exercise of this duty sometimes requires the use of physical force upon another person. The following rules govern whether the use of such force was justified, since the mere fact that a peace officer was involved does not excuse (him/her) from criminal responsibility. Peace officers for the purposes of this defense includes (police officers / correction officers / judicial marshals).

The statute defining this defense reads in pertinent part as follows:

a peace officer is justified in using physical force upon another person when and to the extent that (he/she) reasonably believes such to be necessary to (effect an arrest / prevent an escape from custody) of a person whom (he/she) reasonably believes to have committed an offense, unless (he/she) knows that the arrest or custody is unauthorized.

The term "offense" means any crime or violation which constitutes a breach of any law and which is punishable by imprisonment, fine or both.

### **Deadly and non-deadly physical force**

The first determination you must make is what degree of force the defendant used. The law distinguishes non-deadly physical force from deadly physical force. "Physical force" means actual physical force or violence or superior physical strength. The term "deadly physical force" is defined by statute as physical force which can reasonably be expected to cause death or serious physical injury. Under this definition, the physical force used by the defendant need not actually have caused a death or a serious physical injury in order to be considered deadly physical force, nor need it have been expected or intended by the defendant to result in such serious consequences. Instead, what determines whether the defendant used deadly physical force is whether the force actually used by the defendant could reasonably have been expected to cause death or serious physical injury. "Physical injury" is defined by statute as impairment of physical condition or pain, and "serious physical injury" is defined as physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ.

It is up to you to determine whether the defendant used deadly physical force or non-deadly physical force against *<insert name of the other person>*. You are to make that determination after considering all the evidence. If the state claims that the defendant used deadly physical force, the state must prove that beyond a reasonable doubt. The first question you must resolve, then, is whether the level of force used by the defendant rises to the level of deadly physical force, or is some lower degree of physical force.

### **Reasonable beliefs**

Each of the reasonable belief requirements of the defense requires you to ask two questions. The first question you must ask is, simply, as a matter of fact, whether the defendant actually -- that is, honestly and sincerely -- entertained the belief in question when (he/she) acted as (he/she) did. The second question you must ask is whether the defendant's actual belief was reasonable, in the sense that a reasonable *<insert type of officer>* in the defendant's circumstances at the time of (his/her) actions, viewing those circumstances from the defendant's point of view, would have shared that belief. A *<insert type of officer>* cannot justifiably act on (his/her) actual belief, however honestly or sincerely (he/she) held it, if that belief would not have been shared by a reasonable *<insert type of officer>* in (his/her) circumstances, viewing those circumstances from the defendant's point of view.

To convict the defendant of *<insert applicable crimes>*, the state must disprove beyond a reasonable doubt one of the following elements:

**Element 1 - Actual belief that someone had committed an offense**

The first element is that the defendant actually believed that *<insert name of person>* had committed an offense. If you have found that the force used by the defendant was deadly physical force, then this element requires that the defendant actually believed that the other person had committed or attempted to commit a felony that involved the infliction or threatened infliction of serious physical injury and, when feasible, (he/she) has given warning of (his/her) intent to use deadly physical force. A felony is an offense for which a person may be sentenced to a term of imprisonment in excess of one year.

**Element 2 - Reasonableness of that belief**

The second element is that the defendant's belief that *<insert name of person>* had committed an offense was reasonable. The officer need not have actual knowledge that an offense was committed, but only a reasonable belief. A reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the reasonably believed facts or circumstances would not in law constitute an offense, for example, the peace officer was mistaken that the actions of the person constitute an offense, the peace officer would not be justified in the use of physical force to (make an arrest / prevent an escape from custody). Also, no matter how reasonable a peace officer's belief that an offense was committed, if (he/she) knows that an arrest is unauthorized, then no degree of force is justified.

**Element 3 - Actual belief that degree of force was necessary**

The third element is that when the defendant used physical force upon *<insert name of person>* for the purpose of (effectuating the arrest / preventing the escape), (he/she) actually -- that is, honestly and sincerely -- believed that the degree of force (he/she) used was necessary for that purpose.

**Element 4 - Reasonableness of that belief**

The fourth element is that the defendant's belief regarding the degree of force necessary was reasonable from the perspective of a reasonable *<insert type of officer>* in the defendant's circumstances. If you find that the defendant used deadly physical force, then (he/she) must have the reasonable belief that (he/she) could (effect the arrest / prevent escape) only by using deadly physical force; if lesser force was reasonable, then the use of deadly physical force would be unjustified.

**Conclusion**

You must remember that the defendant has no burden of proof whatsoever with respect to this defense. Instead, it is the state that must disprove beyond a reasonable doubt that the defendant was justified in using physical force if it is to prevail on its charge[s] of *<insert applicable crimes>*[, or of any of the lesser-included offenses on which you have been instructed]. The state need not disprove all of the elements of the defense. Instead, it can defeat the defense by disproving any one of the four elements of the defense beyond a reasonable doubt to your unanimous satisfaction.

If you unanimously find that the state has not proved beyond a reasonable doubt all of the elements of <insert offense charged>, then you must find the defendant not guilty and not consider (his/her) defense.

If you unanimously find that all the elements of <insert applicable crimes and any lesser included offenses> have been proved beyond a reasonable doubt, you shall then consider the defense. If you unanimously find that the state has disproved beyond a reasonable doubt at least one of the elements of the defense, you must reject that defense and return a verdict of guilty.

If, on the other hand, you unanimously find that the state has not disproved beyond a reasonable doubt at least one of the elements of the defense, then on the strength of that defense alone you must find the defendant not guilty of <insert applicable crimes> despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt.

### ***Commentary***

"[T]he reasonableness of the defendant's belief under § 53a-22 should be evaluated pursuant to the subjective-objective formulation." *State v. Smith*, 73 Conn. 173, 185 (2002). "[T]he test for determining whether a police officer's use of deadly force was reasonable is to be judged according to the subjective-objective formulation used in evaluating self-defense claims under § 53a-19. With respect to the objective part of the test, however, the reasonableness is to be judged from the perspective of a reasonable police officer." *Id.*, 205. See discussion in the Introduction to this section.

Connecticut has adopted the language of the rule announced in *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985), as well as the ALI Model Penal Code language, which restricts the use of deadly force by a police officer to a suspect who committed or attempted to commit a felony involving the infliction or threatened infliction of serious physical harm. This act concerning the use of deadly force changed the common-law rule that a peace officer may use deadly force in the arrest of any suspected felon, regardless of the seriousness of the felony or the perceived risk to the arresting officer. *Martyn v. Donlin*, 151 Conn. 402, 411 (1964). *Garner* notes that the common-law rule governing the use of deadly force has steadily dissipated and that many police departments restrict their use of deadly force more severely than necessary under the common-law rule.

## 2.8-7 Use of Physical Force by Private Person at the Request of a Peace Officer in Making Arrest or Preventing Escape -- § 53a-22 (d)

Revised to December 1, 2007

The evidence in this case raises the defense that the defendant, as a private citizen, was justified in the use of physical force because (he/she) was acting at the direction of a peace officer in (making an arrest / preventing an escape). This defense applies to the charge[s] of *<insert applicable crimes>* [and the lesser included offense[s] of *<insert lesser included offenses>*.]

After you have considered all of the evidence in this case, if you find that the state has proved each element of *<insert applicable crimes and any lesser included offenses>*, you must go on to consider whether or not the defendant was justified in (his/her) use of force.

When, as in this case, evidence of justification is introduced at trial, the state must not only prove beyond a reasonable doubt all the elements of the crime charged to obtain a conviction, but must also disprove beyond a reasonable doubt that the defendant was justified in (his/her) use of force. If the state fails to disprove beyond a reasonable doubt that the defendant was not justified, you must find the defendant not guilty of *<insert applicable crimes and any lesser included offenses>* despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt. The defendant has no burden of proof whatsoever with respect to his defense of justification.

The law allows a private citizen to use force to (make an arrest / prevent an escape) at the direction of a peace officer. When a person is directed to assist a peace officer in (making an arrest / preventing an escape), that person is justified in using reasonable physical force to carry out that task. The statute defining this defense reads in pertinent part:

a person who has been directed by a (peace officer / special policeman / authorized official of the department of correction or the board of pardons and paroles) to assist (him/her) to (effect an arrest / prevent an escape from custody) is justified in using reasonable physical force when and to the extent that (he/she) reasonably believes such to be necessary to carry out the officer's direction.

### **Deadly and non-deadly physical force**

The first determination you must make is what degree of force the defendant used. The law distinguishes non-deadly physical force from deadly physical force. "Physical force" means actual physical force or violence or superior physical strength. The term "deadly physical force" is defined by statute as physical force which can reasonably be expected to cause death or serious physical injury. Under this definition, the physical force used by the defendant need not actually have caused a death or a serious physical injury in order to be considered deadly physical force, nor need it have been expected or intended by the defendant to result in such serious consequences. Instead, what determines whether the defendant used deadly physical force is whether the force actually used by the defendant could reasonably have been expected to cause death or serious physical injury. "Physical injury" is defined by statute as impairment of

physical condition or pain, and "serious physical injury" is defined as physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ.

It is up to you to determine whether the defendant used deadly physical force or non-deadly physical force against *<insert name of the other person>*. You are to make that determination after considering all the evidence. If the state claims that the defendant used deadly physical force, the state must prove that beyond a reasonable doubt. The first question you must resolve is whether the level of force used by the defendant rises to the level of deadly physical force, or is some lower degree of physical force.

To convict the defendant of *<insert applicable crimes>*, the state must disprove beyond a reasonable doubt one of the following elements:

**Element 1 - Directed by an officer**

The first element is that the defendant was actually directed by an officer to (arrest another person / prevent another person from escaping). Note that no precise words of command are required so long as the direction for assistance is reasonably evident from the language used.

**Element 2 - Actual belief that physical force was necessary**

The second element is that the defendant actually -- that is, honestly and sincerely -- believed that the physical force (he/she) used was necessary to carry out the officer's directions.

**Element 3 - Reasonableness of belief**

The third element is that the defendant's belief was reasonable. Note that in assessing the reasonableness of the defendant's belief, it is not relevant whether the peace officer was mistaken in pursuing the person (being arrested / whose escape is sought to be prevented), or whether the person was later acquitted of the crimes for which (he/she) was being pursued and arrested. A private person acting at the direction of a peace officer will be justified in using a reasonable degree of force if (he/she) were actually directed to (arrest another person / prevent another person from escaping) by a peace officer and the force used was reasonable.

A reasonable degree of force is that degree of force that a reasonable person in the same circumstances viewed from the perspective of the defendant would use and no more. If the degree of force used is excessive or unreasonable in view of all the circumstances, the defendant is not entitled to this defense. Whether the defendant had the requisite belief and whether the defendant's belief was reasonable and whether the degree of force (he/she) used was reasonable are questions of fact for you to determine from the evidence in the case to apply.

If you have found that the defendant used deadly physical force, your determination of the reasonableness of the belief that deadly physical force was necessary under the circumstances has further limitations. The defendant is justified in using deadly physical force only to counter deadly physical force or what (he/she) reasonably believes to be the imminent use of deadly physical force. This is a decision the person may make on (his/her) own judgment, or at the direction of the peace officer. But in either case, (his/her) actions must be reasonable under the circumstances. If the defendant knows that the peace officer (himself/herself) is not authorized

to use deadly physical force under the circumstances, then the defendant is not justified in following the peace officer's direction to employ deadly physical force and the defendant will be liable for the result of (his/her) actions.

### **Conclusion**

You must remember that the defendant has no burden of proof whatsoever with respect to this defense. Instead, it is the state which must disprove beyond a reasonable doubt that the defendant was justified in using physical force if it is to prevail on its charge[s] of *<insert applicable crimes>*[, or of any of the lesser-included offenses on which you have been instructed]. The state need not disprove all of the elements of the defense. Instead, it can defeat the defense by disproving any one of the elements of the defense beyond a reasonable doubt to your unanimous satisfaction.

If you unanimously find that the state has not proved beyond a reasonable doubt all of the elements of *<insert applicable crimes>*, then you must find the defendant not guilty and not consider (his/her) defense.

If you unanimously find that all the elements of *<insert applicable crimes and any lesser included offenses>* have been proved beyond a reasonable doubt, you shall then consider the defense. If you unanimously find that the state has disproved beyond a reasonable doubt at least one of the elements of the defense, you must reject that defense and return a verdict of guilty.

If, on the other hand, you unanimously find that the state has not disproved beyond a reasonable doubt at least one of the elements of the defense, then on the strength of that defense alone you must find the defendant not guilty of *<insert applicable crimes>* despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt.

## 2.8-8 Use of Physical Force by Private Person to Make an Arrest -- § 53a-22 (f)

Revised to December 1, 2007

**Note:** Section 53a-22 (f) provides that "a private person is not justified in using deadly physical force to make a civilian arrest except in self-defense or in defense of others as prescribed in § 53a-19."

The evidence in this case raises the issue that the defendant, as a private citizen, was justified in the use of physical force because (he/she) was effecting what is known as a civilian arrest. This defense applies to the charge[s] of *<insert applicable crimes>* [and the lesser included offense[s] of *<insert lesser included offenses>*.]

After you have considered all of the evidence in this case, if you find that the state has proved each element of *<insert applicable crimes and any lesser included offenses>*, you must go on to consider whether or not the defendant was justified in (his/her) use of force.

When, as in this case, evidence of justification is introduced at trial, the state must not only prove beyond a reasonable doubt all the elements of the crime charged to obtain a conviction, but must also disprove beyond a reasonable doubt that the defendant was justified in (his/her) use of force. If the state fails to disprove beyond a reasonable doubt that the defendant was not justified, you must find the defendant not guilty of *<insert applicable crimes and any lesser included offenses>* despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt. The defendant has no burden of proof whatsoever with respect to (his/her) defense of justification.

The law allows a civilian arrest for any offense, whether it be a felony, misdemeanor, traffic violation or other infraction, but the private person making such an arrest is held to a very high standard of conduct. Unlike a peace officer, the civilian making an arrest may not claim justification merely because (he/she) believes that the arrested person committed an offense. Rather, regardless of the reasonableness of (his/her) belief, (his/her) right to make a civilian arrest is allowed only if the person actually committed an offense. A mistaken arrest, no matter how well-intentioned, is not justified under our law.

The statute defining this defense reads in pertinent part:

a private person acting on (his/her) own account is justified in using reasonable physical force upon another person when and to the extent that (he/she) reasonably believes such to be necessary to effect an arrest or to prevent the escape from custody of an arrested person whom (he/she) reasonably believes to have committed an offense and who in fact has committed such offense.

To convict the defendant of *<insert applicable crimes>*, the state must disprove beyond a reasonable doubt one of the following elements:

### **Element 1 - Another person actually committed an offense**

The first element is that the person who was arrested by the defendant actually committed an offense. It is not necessary that the defendant actually saw the offense being committed, but regardless of (his/her) belief, the privilege is lost if the person arrested did not actually commit an offense. "Offense" means any crime or violation which constitutes a breach of any law and which is punishable by imprisonment, fine or both. The defendant claims that *<insert name of person>* committed *<insert offense>*.

### **Element 2 - Actual belief that degree of force was necessary**

The second element is that the defendant believed that the amount of force used to effect the arrest was reasonable and not excessive under the circumstances. A private person may never use deadly physical force to effect the arrest of one who has committed a crime.<sup>1</sup>

### **Element 3 - Reasonableness of that belief**

The third element is that the amount of force that the defendant believed was necessary to make the arrest was objectively reasonable. A reasonable degree of force is that degree of force that a reasonable person in the same circumstances viewed from the perspective of the defendant would use and no more. If the degree of force used is excessive or unreasonable in view of all the circumstances, the defendant is not entitled to this defense. Whether the defendant had the requisite belief and whether the defendant's belief was reasonable and whether the degree of force (he/she) used was reasonable are questions of fact for you to determine from the evidence in the case to apply.

### **Conclusion**

You must remember that the defendant has no burden of proof whatsoever with respect to this defense. Instead, it is the state that must disprove beyond a reasonable doubt that the defendant was justified in using physical force if it is to prevail on its charge of *<insert applicable crimes>*[, or of any of the lesser-included offenses on which you have been instructed]. The state need not disprove all of the elements of the defense. Instead, it can defeat the defense by disproving any one of the elements of the defense beyond a reasonable doubt to your unanimous satisfaction.

If you unanimously find that the state has not proved beyond a reasonable doubt all of the elements of *<insert applicable crimes>*, then you must find the defendant not guilty and not consider (his/her) defense.

If you unanimously find that all the elements of *<insert applicable crimes and any lesser included offenses>* have been proved beyond a reasonable doubt, you shall then consider the defense. If you unanimously find that the state has disproved beyond a reasonable doubt at least one of the elements of the defense, you must reject that defense and return a verdict of guilty.

If, on the other hand, you unanimously find that the state has not disproved beyond a reasonable doubt at least one of the elements of the defense, then on the strength of that defense alone you must find the defendant not guilty of *<insert applicable crimes>* despite the fact that you have found the elements of (that crime / those crimes) proved beyond a reasonable doubt.

---

<sup>1</sup> The privileged use of deadly force to apprehend a suspected felon is codified at General Statutes § 53a-22 (c), and is not extended to the civilian arrest situation. See General Statutes §§ 53a-22 (f) and 53a-19 (b), which allow deadly force only by a peace officer or one acting at his direction. One attempting to make a civilian arrest must use only as much force as is reasonably necessary. See, e.g., *State v. Ghiloni*, 35 Conn. Sup. 570 (App. Sess. 1979).

***Commentary***

See generally *State v. Smith*, 63 Conn. App. 228, 240, cert. denied, 258 Conn. 901 (2001), in which the Court held that the defendant was entitled to an instruction on the defense of justification on the theory that he was effecting a citizen's arrest.

## 2.8-9 Resisting Arrest by Physical Force -- § 53a-23

Revised to December 1, 2007

**Note:** There is no instruction for this statute. It is incorporated into other instructions when relevant.

### *Commentary*

Section 53a-23 does not define a defense, but abrogates the common-law rule that allowed the use of force to resist an unlawful arrest. *State v. Concaugh*, 170 Conn. 95, 99 (1976). Prior to the statute, this rule was established in cases such as *State v. Amara*, 152 Conn. 296, 299 (1964); *State v. Engle*, 115 Conn. 638, 648 (1933); *State v. Scheele*, 57 Conn. 307, 320 (1889). It should be noted, however, that a defendant may properly use force against a peace officer to resist excessive force during an arrest. *In re Adalberto S.*, 27 Conn. App. 49, 58, cert. denied, 222 Conn. 903 (1992).

The effect of § 53a-23 is to require a person to submit to an arrest, even if he or she believes, and ultimately it is determined, that the arrest is illegal. This provision must be charged in conjunction with the crimes of Interfering with an Officer (§ 53a-167a) or Assault on Public Safety or Emergency Medical Personnel (§ 53a-167c). See Interfering with an Officer, Instruction 4.3-1, and Assault of Public Safety or Emergency Medical Personnel, Instruction 4.3-3.

### *Common-law privilege to resist an unlawful entry into one's home*

In *State v. Gallagher*, 191 Conn. 433 (1983), the Court held that while General Statutes § 53a-23 abrogated the common-law privilege to resist arrest, there remains the common-law privilege to resist an unlawful entry into one's home. "We will continue to adhere to the common-law view that there are circumstances where unlawful warrantless intrusion into the home creates a privilege to resist, and that punishment of such resistance is therefore improper." *Id.*, 442. The common-law privilege to offer reasonable resistance is limited to conduct "not rising to the level of an assault." *Id.*, 443. "[W]hether the defendant's conduct was an excusable response to an unlawful entry was a question for the jury." *Id.*, 445 (finding it error not to instruct the jury concerning the defense of reasonable resistance to an unlawful entry).

Subsequently, in *State v. Brocuglio*, 264 Conn. 778 (2003), the Court adopted the new crime exception to the exclusionary rule, holding that "the common-law privilege to challenge an unlawful entry into one's home still exists to the extent that a person's conduct does not rise to the level of a crime" *Id.*, 793-94. The Court noted, however, that "[a]lthough our holding circumscribes the type of behavior in which one may engage . . . we conclude that it is unnecessary at this juncture to state precisely the scope and nature of permissible conduct." *Id.*, 794. n.13.

## **2.9 AFFIRMATIVE DEFENSES**

### **2.9 Introduction to Affirmative Defenses**

#### **2.9-1 Affirmative Defense**

#### **2.9-2 Lack of Capacity -- § 53a-13**

#### **2.9-3 Inoperability of Firearm -- § 53a-16a**

#### **2.9-4 Unarmed Coparticipant -- § 53a-16b**

## 2.9 Introduction to Affirmative Defenses

Revised to December 1, 2007

An affirmative defense raises additional factors which, if proved, may exonerate the defendant. *State v. Wilkinson*, 176 Conn. 451, 465 (1979). The burden of proof is on the defendant to prove an affirmative defense. General Statutes § 53a-12 (b). Section "53a-12 (b) does not require the legislature expressly to declare that an exception to culpability is an affirmative defense for it to operate as an affirmative defense." *State v. Valinski*, 254 Conn. 107, 127 (2000). It also does not "require that all affirmative defenses be statutorily prescribed." *Id.* "[I]f § 53a-12 (b) does not prohibit the recognition of common-law affirmative defenses, it would be unreasonable to conclude that § 53a-12 (b) abrogates the rule of statutory construction that where exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *Id.*, 127-28.

"Under *Patterson*, [432 U.S. 197, 209, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977),] a state can place the burden of proving an affirmative defense on the defendant as long as that burden does not include negating an element of the crime." *State v. Wilkinson*, 176 Conn. 451, 464 (1979); see also *State v. Andresen*, 256 Conn. 313, 326-27 (2001) (construing exemptions in the Connecticut Uniform Securities Act to be affirmative defenses because they do not serve to negate an element of the crime of selling unregistered securities).

"An affirmative defense is presented in the orderly course of a criminal trial after the prosecution has presented its case-in-chief." *State v. Coleman*, 202 Conn. 86, 91 (1987).

### ***When instruction is required***

A defendant is entitled to a requested instruction on an affirmative defense "only if there is sufficient evidence for a rational juror to find that all the elements of the defense are established by a preponderance of the evidence." *State v. Person*, 236 Conn. 342, 353 (1996); *State v. Small*, 242 Conn. 93, 102-103 (1997) (same is true regardless of whether defendant or state requested instruction).

### ***Specific affirmative defenses***

Most affirmative defenses are legislatively created to apply to specific offenses. Exceptions are:

- Statutes of limitations. General Statutes §§ 54-193, 54-193, 54-193b. *State v. Coleman*, 202 Conn. 86, 91 (1987) (§ 54-193 (b) is an affirmative defense, not a jurisdictional bar to prosecution); *State v. Parsons*, 28 Conn. App 91, 96 (1992) (burden is on the defendant to prove a statute of limitations defense); see also *State v. Ali*, 233 Conn. 403, 416 (1995) (defendant entitled to jury instruction on whether arrest warrant was issued with due diligence so as to bring prosecution within the statute of limitations); *State v. Soldi*, 92 Conn. App. 849, 860 (2006) (burden is on the state to prove that the warrant was executed within a reasonable time).
- Abandonment. *State v. Wilkinson*, 176 Conn. 451, 463 (1979); *State v. Alterio*, 154 Conn. 23, 31 (1966). Defendant must prove 1) change of purpose, and 2) communication of that change to coparticipant(s). General Statutes § 53a-10 makes abandonment by an accessory a general defense. *Wilkinson* questions

whether this may have had some effect on the holding of *Alterio*, but concludes that principal and accessorial liability are sufficiently dissimilar to not infer from the enactment of § 53a-10 that abandonment in all cases is no longer an affirmative defense.

- Lack of capacity. See Instruction 2.9-2.

Offense-specific affirmative defenses are discussed with the instruction for the offense.

The following affirmative defenses are in separate instructions:

- Inoperability of Firearm -- § 53a-16a, Instruction 2.9-3.
- Unarmed Coparticipant -- § 53a-16b, Instruction 2.9-4.
- Affirmative Defense to Felony Murder -- § 53a-54c, Instruction 5.4-2.
- Affirmative Defense of Extreme Emotional Disturbance -- § 53a-54a (a) and § 53a-55 (a) (2), Instruction 5.2-1.
- Affirmative Defense to Sexual Assault -- § 53a-67, Instruction 7.1-13.
- Affirmative Defense to Obscenity as to Minors -- § 53a-196 (c), Instruction 7.4-4.
- Affirmative Defenses to Child Pornography Possession -- § 53a-196g, Instruction 7.7-5.
- Affirmative Defense of Drug Dependency, Instruction 8.1-4.
- Affirmative Defense to Possession of Assault Weapon -- § 53a-203o, Instruction 8.2-28.
- Affirmative Defense to Burglary -- § 53a-104, Instruction 9.2-6.
- Affirmative Defenses to Criminal Trespass -- § 53a-110, Instruction 9.4-5.

## 2.9-1 Affirmative Defense

Revised to December 1, 2007

An affirmative defense constitutes a separate issue or circumstance that mitigates the degree of, or eliminates, criminality or punishment. An affirmative defense is one that seeks to justify, excuse or mitigate the act charged.

To prove an affirmative defense, the defendant must establish the defense by a preponderance of the evidence.<sup>1</sup> The defendant does not have to prove it beyond a reasonable doubt, as the state has to prove the elements of the crime. Preponderance of the evidence means that after you have considered all the evidence fairly and impartially, you have come to a reasonable belief that what is sought to be proven is more likely true than not true. This means that you take all of the evidence that has been offered on this issue by both the defendant and the state and weigh and balance it. If the better and weightier evidence inclines in the defendant's favor, then the defendant has sustained (his/her) burden of proving (his/her) affirmative defense of *<insert affirmative defense>* by a preponderance of the evidence.<sup>2</sup>

If you find that the defendant has proved the affirmative defense of *<insert affirmative defense>* by a preponderance of the evidence, then you must find the defendant not guilty of *<insert offenses to which defense applies>*.

---

<sup>1</sup> General Statutes § 53a-12 (b).

<sup>2</sup> See *State v. Aviles*, 277 Conn. 281, 317 (2006), and *State v. Ortiz*, 217 Conn. 648, 670 (1991).

### *Commentary*

A defendant is entitled to a requested instruction on an affirmative defense only "if there is sufficient evidence for a rational juror to find that all the elements of the defense are established by a preponderance of the evidence." *State v. Person*, 236 Conn. 342, 353 (1996) (overruling cases suggesting that the "any evidence" standard of general defenses applies to affirmative defenses).

## 2.9-2 Lack of Capacity -- § 53a-13

Revised to December 1, 2007

In this case, evidence has been introduced bearing on the affirmative defense of lack of criminal capacity due to mental disease or defect.<sup>1</sup> This requires, then, that I instruct you on the law of the affirmative defense of mental disease or defect. Our law does not use the term "insanity" and I request that you put it, and any connotations it may carry with it, out of your minds.

If you find that the state has proved all the elements of the crime charged, namely *<insert crime charged>*, your task will not be over. You must then go on to decide whether the defendant has proved the affirmative defense of lack of capacity due to mental disease or defect.

Our law on the affirmative defense of mental disease or defect, as it applies to this case, provides as follows: "In any prosecution for an offense, it shall be an affirmative defense that the defendant, at the time (he/she) committed the proscribed act or acts, lacked substantial capacity, as a result of mental disease or defect, either to appreciate the wrongfulness of (his/her) conduct or to control (his/her) conduct within the requirements of the law." The term "mental disease or defect," does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct [or pathological or compulsive gambling].

Before I discuss the meaning of the statute with you, I want to discuss the burden of proof on this issue. In a criminal case, the burden of proof is on the state to prove the defendant guilty beyond a reasonable doubt. However, because the defense of mental disease or defect involves what is known as an affirmative defense, the defendant must prove the existence of a lack of capacity due to mental disease or defect. The defendant has the burden of proving this affirmative defense.

The defendant's burden of proof on this issue is different from and is less than the state's burden of proof on the elements of the crime charged. The defendant does not have to establish this affirmative defense beyond a reasonable doubt. The defendant's burden of proof on this affirmative defense is by the standard known as "a preponderance of the evidence."

Proof by a preponderance of the evidence means, considering all the evidence fairly and impartially, enough evidence as produces in your minds a reasonable belief that what is sought to be proven is more likely true than not true. This means that you take all of the evidence that has been offered on this issue by both the defendant and the state and weigh and balance it. If the better and weightier evidence inclines in the defendant's favor, then (he/she) has sustained (his/her) burden of proving (his/her) affirmative defense of lack of capacity due to mental disease or defect by a preponderance of the evidence.

The elements of the affirmative defense of mental disease or defect are: 1) that at the time of the offense, the defendant had a mental disease or defect, and 2) that as a result of that mental disease or defect, (he/she) lacked the substantial capacity either to appreciate the wrongfulness of (his/her) conduct or to control (his/her) conduct within the requirements of the law.

**Element 1 - Mental disease or defect**

The first element involves the defendant's condition at the time of the offense. You must focus on the defendant's mental condition at the time of the offense. You must consider this question: "what was (his/her) mental condition at that time?" You may consider (his/her) mental condition at times before and after the time of the offense to the extent that (his/her) mental condition before and after bears upon and tends to throw light on (his/her) mental condition at the time of the commission of the acts charged against (him/her). The law concerns itself specifically with (his/her) mental state at the time of the commission of the offense, and whether at that time (he/she) had a mental disease or defect.

The statute does not define the term "mental disease or defect," except to say that this term does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct [or pathological or compulsive gambling]. Thus if you find that the defendant had an abnormality that was evidenced only by repeated criminal or antisocial conduct [or pathological or compulsive gambling], and was not manifested or evidenced by anything else, that would not be a mental disease or defect within the meaning of the statute, and you would go no further in considering this affirmative defense.<sup>2</sup>

With that limited exception in mind, then, a mental disease or defect includes any abnormal condition of the mind that substantially affects mental or emotional processes or substantially impairs behavior controls. The term "behavior controls" refers to the process and capacity to regulate and control one's conduct and actions. Whether the defendant had a mental disease or defect is a question of fact for you to decide on the basis of all the evidence, bearing on that issue. You are not bound by medical definitions, conclusions or opinions as to what is or is not a mental disease or defect. What psychiatrists or psychologists may or may not consider to be a mental disease or defect for clinical purposes may or may not be the same as a mental disease or defect for the purpose of this affirmative defense. You are entitled to accept or reject, in whole or in part, the evidence of the experts as to whether the defendant had a mental disease or defect. Likewise, you are entitled to consider the testimony of the non-expert witnesses who observed the defendant's appearance, behavior, speech, and actions, at or about the time in question. You may consider this evidence on the question of whether the defendant had a mental disease or defect, and you are entitled to accept it or reject it in whole or in part on this issue.

**Element 2 - Lack of substantial capacity to appreciate wrongfulness or control conduct**

The second element of the defense is that as a result of that mental disease or defect, the defendant lacked substantial capacity either to appreciate the wrongfulness of (his/her) conduct or to control (his/her) conduct within the requirements of the law. It is not necessary for the defendant to prove both that (he/she) lacked capacity to appreciate the wrongfulness of (his/her) conduct and that (he/she) lacked the capacity to control (his/her) conduct within the requirements of the law. It is sufficient if (he/she) establishes either. Thus, this element has two alternative parts: lack of substantial capacity to appreciate wrongfulness, or lack of substantial capacity to control conduct.

A substantial capacity is a significant or a material capacity, not a minor or inconsequential capacity. Thus you must first decide whether the defendant's incapacity was substantial.

The first part of this second element of the affirmative defense is that the defendant lacked substantial capacity to appreciate the wrongfulness of (his/her) conduct. This means that (he/she) lacked substantial capacity to understand, both intellectually and emotionally, that (his/her) actions were wrong. This does not include a person whose faculties were impaired in some measure but were still sound enough for him to understand that (his/her) conduct was wrong. Not every mental deficiency or abnormality leaves a person without substantial capacity to appreciate the wrongfulness of (his/her) conduct. It is only when the mental deficiency or abnormality is of such degree that the defendant lacks substantial capacity to appreciate that a particular act or course of conduct was wrong, that this part of the affirmative defense excuses (him/her) from criminal liability.

[<Include if supported by the evidence of the case:><sup>3</sup>

A defendant may establish that (he/she) lacked substantial capacity to appreciate the "wrongfulness" of (his/her) conduct if (he/she) proves that, at the time (he/she) committed the criminal acts, due to mental disease or defect (he/she) suffered from a misperception of reality and, in acting on the basis of that misperception, (he/she) did not have the substantial capacity to appreciate that (his/her) actions were contrary to societal morality, even though (he/she) may have been aware that the conduct in question was criminal.

In deciding whether the defendant had substantial capacity to appreciate that (his/her) conduct was contrary to societal morality, you must not limit your inquiry merely to the defendant's appreciation that society, objectively speaking, condemned (his/her) actions. Rather, you must determine whether the defendant maintained a sincere belief that society would condone (his/her) actions under the circumstances as the defendant honestly perceived them.

A defendant does not truly appreciate the wrongfulness of (his/her) conduct if a mental disease or defect causes (him/her) both to harbor a distorted perception of reality and to believe that, under the circumstances as (he/she) honestly perceives them, (his/her) actions do not offend societal morality, even though (he/she) may also be aware that society has labeled (his/her) actions criminal. Thus, the defense of lack of capacity due to mental disease or defect could be proved if, as a result of the defendant's mental disease or defect, (he/she) sincerely believes that society would approve of (his/her) conduct if it shared (his/her) understanding of the circumstances underlying (his/her) actions.<sup>4</sup>

If, however, you find that the defendant had the substantial capacity to appreciate that (his/her) conduct both violated the criminal law and was contrary to society's moral standards, under the circumstances as the defendant honestly perceived them, then you may not find that the defendant lacked substantial capacity to appreciate the wrongfulness of (his/her) conduct simply because, as a result of mental disease or defect, (he/she) elected to follow (his/her) own personal moral code.]

The second part of the second element of the affirmative defense is that the defendant lacked substantial capacity to control (his/her) conduct within the requirements of the law. This part of the defense relieves a person from criminal liability if (his/her) mental disease or defect results in a lack of substantial capacity to keep (his/her) conduct within the requirements of the law even though (he/she) may appreciate its wrongfulness. This portion of the defense, in order to

succeed, requires the defendant to prove that (he/she) had an inability to keep (his/her) conduct within the requirements of the law. Therefore, a person whose faculties are impaired, but still is able to control (his/her) conduct cannot claim a lack of capacity. It is only when a person lacks substantial capacity to keep (his/her) conduct under control, and thus keep it within the requirements of the law that this part of the affirmative defense excuses (him/her) from criminal liability.

You have heard the evidence presented as well as the arguments of counsel. It is for you to determine whether the defendant has established this affirmative defense by a preponderance of the evidence.

There are three possible verdicts that you can reach on these charges. If you have unanimously found that the state has proved beyond a reasonable doubt all the elements of the crime charged, and the defendant has failed to prove by a preponderance of the evidence the affirmative defense of lack of capacity, your verdict would be guilty. If you have unanimously found that the state has proved beyond a reasonable doubt all the elements of the crime charged, and the defendant has proved the affirmative defense of lack of capacity by a preponderance of the evidence, your verdict would be not guilty by reason of lack of capacity due to mental disease or defect. If you have unanimously found that the state has failed to prove beyond a reasonable doubt all the elements of the crime charged, you would not even consider the affirmative defense of lack of capacity, and your verdict in that instance would be not guilty.

### **Consequences**

*<Include unless the defendant specifically objects:>*<sup>5</sup>

I must also inform you of the consequences for the defendant if (he/she) is found not guilty by reason of lack of capacity due to mental disease or defect, and of the applicable confinement and release provisions of the law. A defendant who has been found not guilty by reason of lack of capacity due to mental disease or defect is referred to as an acquittee.

The confinement provision requires the court to commit the acquittee to the commissioner of mental health and addiction services for temporary confinement in a state hospital for an examination to determine (his/her) mental condition. Within forty-five days of the order of commitment, the superintendent of that hospital must file a report concerning the mental condition of the acquittee with the court.

After receipt of this report, either party will have an opportunity to have another examination of the acquittee. The court will conduct a hearing to determine the mental condition of the acquittee, with the primary concern being the protection of society. After the court hears the evidence, the court will determine if the acquittee should be confined, conditionally released or discharged. A finding that the acquittee should be confined or conditionally released will result in an order committing the acquittee to the psychiatric security review board for confinement in a state mental institution for custody, care and treatment pending a hearing by the psychiatric security review board within ninety days of the order. This court shall fix a maximum period of confinement authorized for the crime for which (he/she) was found not guilty by reason of lack of capacity due to mental disease or defect. If the court determines that a conditional release is warranted, the court shall so recommend to the psychiatric security review board. However, if

the evidence indicates that the defendant is not a threat to (himself/herself) or others, and that the protection of society would not be adversely affected by (his/her) release, the court may discharge the acquittee from further custody.

If there are changes in the acquittee's condition from the first report, the court will hold another hearing to determine whether to continue the acquittee's commitment, to conditionally release (him/her) or to discharge (him/her). The law provides that if the acquittee is again confined to a state hospital, the psychiatric security review board retains jurisdiction over (him/her), and during (his/her) period of confinement the superintendent of the state hospital will have to report to the board at least every six months as to (his/her) condition.

If conditions change, the board could, on its own, conditionally release (him/her), or recommend to the court that (he/she) be released unconditionally. The court, during the course of any commitment of a person found not guilty by reason of lack of capacity due to mental disease or defect, always maintains supervision of that person. At any time, the superintendent of the mental hospital may recommend to the board that the acquittee be released. This will result in a hearing before a judge. In summary, the law provides that there be an initial commitment and hearing, and, depending on the evidence presented, the acquittee will either be discharged or committed. If the acquitted is committed, this decision will be reviewed after ninety days, and every six months after that, as the intention is to hold someone only until such point as (he/she) is no longer a danger to (himself/herself) or others, and that society is in fact protected.

### **Conclusion**

That concludes the court's instruction with reference to the defense of mental disease or defect.

---

<sup>1</sup> See General Statutes § 53a-12; *State v. Joyner*, 225 Conn. 450 (1993).

<sup>2</sup> General Statutes § 53a-13 (c). The court in *United States v. Brawner*, 471 F.2d 969, 992-94 (D.C. Cir. 1972), held that the trial court should consider this language, referred to as the "caveat," in ruling on the admissibility of evidence of mental disease, but should not use it to instruct the jury; see also Commentary to Model Penal Code § 4.01, p. 174, n.29. However, the court in *Bethea v. United States*, 365 A.2d 64, 80- 81, n.36 (D.C. 1976), cert. denied, 433 U.S. 911, 97 S. Ct. 2979, 53 L. Ed. 2d 1093 (1977), stated that "it is vastly preferable to treat the problem with a jury instruction, rather than to adopt the concept . . . as a rule of evidence."

<sup>3</sup> "[A] defendant is entitled to an instruction defining wrongfulness in terms of societal morality when, in light of the evidence, the distinction between illegality and societal morality bears upon the defendant's insanity claim. . . . [M]ost cases in which the insanity defense is raised involve crimes sufficiently serious such that society's moral judgment regarding the accused's conduct will be identical to the legal standard reflected in the applicable criminal statute. . . . Thus, it will be the unusual case in which the distinction between wrongfulness and criminality [will] be determinative. . . ." (Citations omitted; internal quotation marks omitted.) *State v. Cole*, 254 Conn. 88, 102-03 (2000).

In *State v. Wilson*, 242 Conn. 605 (1997), the court concluded "that the defendant was entitled to receive an instruction properly defining the term 'wrongfulness' and, further, that the trial court's failure to give such an instruction was harmful." *Id.*, 611. In *State v. Cole*, *supra*, however, the

court held that the defendant was not entitled to an instruction defining the term "wrongfulness." Id., 106. "Consistent with [the court's] holding in *Wilson*, a defendant is entitled to an instruction defining wrongfulness in terms of societal morality when, in light of the evidence, the distinction between illegality and societal morality bears upon the defendant's insanity claim." Id., 102. "In contrast to *Wilson*, this is not a case in which the distinction between illegality and morality bears upon the defendant's insanity defense." Id., 103.

<sup>4</sup> *State v. Wilson*, supra, 242 Conn. 622-23. "This formulation appropriately balances the concepts of societal morality that underlie our criminal law with the concepts of moral justification that motivated the legislature's adoption of the term 'wrongfulness' in our insanity statute." Id., 623.

<sup>5</sup> General Statute § 54-89a. The language in this part of the instruction is substantially what was approved in *State v. Cole*, 50 Conn. App. 312 (1998), aff'd on other grounds, 254 Conn. 88 (2000).

#### ***Commentary***

The constitutionality of § 53a-13 was upheld in *State v. Joyner*, 225 Conn. 450 (1993); see also *State v. DeJesus*, 236 Conn. 189, 204-05 (1996); *State v. Ross*, 230 Conn. 183, 222-23 (1994), cert. denied, 513 U.S. 1165, 115 S. Ct. 1133, 130 L. Ed. 2d 1095 (1995).

The only standard by which to determine insanity as a defense to a crime is that found in General Statutes § 53a-13. *State v. Gaffney*, 209 Conn. 416, 420-21 (1988); *State v. Cohane*, 193 Conn. 474, 480-81 n.5, cert. denied, 469 U.S. 990, 105 S. Ct. 397, 83 L. Ed. 2d 331 (1984); *State v. Toste*, 178 Conn. 626, 633 (1979). Use of the common-law "M'Naghten" Rule is improper. *State v. Torrence*, 196 Conn. 430, 437 (1985).

## 2.9-3 Inoperability of Firearm -- § 53a-16a

Revised to December 1, 2007 (modified May 10, 2012)

The defendant has raised the affirmative defense that the <insert type of firearm> was not a weapon from which a shot could be discharged. In other words, the <insert type of firearm> was inoperable.<sup>1</sup>

<See Affirmative Defense, Instruction 2.9-1.>

---

<sup>1</sup> On the use of the term "inoperable," see *State v. Darryl W.*, 303 Conn. 353, 357 n.5.

### *Commentary*

Section 53a-16a applies to the following offenses:

§ 53a-55a, Manslaughter in the first degree with a firearm.

§ 53a-56a, Manslaughter in the second degree with a firearm.

§ 53a-60a, Assault in the second degree with a firearm.

§ 53a-92a, Kidnapping in the first degree with a firearm.

§ 53a-94a, Kidnapping in the second degree with a firearm.

§ 53a-102a, Burglary in the second degree with a firearm.

§ 53a-103a, Burglary in the third degree with a firearm.

All of these offenses include the following provision: "uses, or is armed with and threatens the use of or displays or represents by his words or conduct that he possesses a pistol, revolver, shotgun, machine gun, rifle or other firearm."

A similar affirmative defense is found in § 53a-134 (a) (4), robbery in the first degree. In contrast to the above offenses, it is applicable only to the subdivision that includes "displays or threatens the use of what he represents by his words or conduct to be a pistol, revolver, rifle, shotgun, machine gun or other firearm." *State v. Hawthorne*, 175 Conn. 569, 573 (1978) (operability is not an element of this subdivision of robbery; inoperability is an affirmative defense that may be raised).

## 2.9-4 Unarmed Coparticipant -- § 53a-16b

Revised to December 1, 2007

The defendant has raised the affirmative defense<sup>1</sup> that (he/she) was not armed with a pistol, revolver, machine gun, shotgun, rifle or other firearm, and had no reasonable ground to believe that <insert name of armed coparticipant> was armed with such a weapon.

<See Affirmative Defense, Instruction 2.9-1.>

---

- <sup>1</sup> This defense is available for the following offenses:
- § 53a-55a, Manslaughter in the first degree with a firearm.
  - § 53a-56a, Manslaughter in the second degree with a firearm.
  - § 53a-60a, Assault in the second degree with a firearm.
  - § 53a-92a, Kidnapping in the first degree with a firearm.
  - § 53a-94a, Kidnapping in the second degree with a firearm.
  - § 53a-102a, Burglary in the second degree with a firearm.
  - § 53a-103a, Burglary in the third degree with a firearm.

## **2.10 CONCLUDING**

**2.10-1 Duties Upon Retiring**

**2.10-2 Note-Taking**

**2.10-3 Sympathy / Bias**

**2.10-4 When Jury Fails to Agree ("Chip Smith")**

**2.10-5 When Alternate Juror Empaneled after  
Deliberations have Begun**

**2.10-6 When Jury Poll Reveals Lack of  
Unanimity**

## 2.10-1 Duties Upon Retiring

Revised to December 1, 2007

In conclusion, I impress upon you that you are duty bound as jurors to determine the facts on the basis of the evidence as it has been presented, to apply the law as I have outlined it, and then to render a verdict of guilty or not guilty as to each count. When you reach a verdict, it must be unanimous. It is the duty of each juror to discuss and consider the opinions of the other jurors. Despite that, in the last analysis, it is your individual duty to make up your own mind and to decide this case upon the basis of your own individual judgment and conscience.

With that, you may now retire to the jury room. Do not begin deliberations until you have selected one of your members to be the foreperson of the jury and you have received the information and exhibits. You may only deliberate when all (six / twelve) of you are present in the jury room. You must render a separate verdict as to each of the counts of the information. Inform the judicial marshal when you have reached a verdict, but do not tell (him/her) your verdict. You will be asked to return to the courtroom where your foreperson will announce the verdict orally in response to questions from the courtroom clerk. The rest of the panel will be asked whether they concur with the verdict.

If you have any questions please send them out as a note, signed by the foreperson marked with the time. Please be as specific as possible.

### *Commentary*

The verdict on all counts should be taken before the court accepts the verdicts and orders them recorded.

If the charges against the defendant are inconsistent, the jury can only render a verdict with regard to one of the inconsistent charges. For example, the state often charges in the alternative when factual issues determine which crime was committed. See *State v. Morris*, 49 Conn. App. 409, cert. denied, 247 Conn. 904 (1998) (charged under both § 53a-70 (a) (1) and § 53a-70 (a) (2) because factual issue as to whether victim was 13 years old at the time of the assaults); *State v. Prutting*, 40 Conn. App. 151, cert. denied, 236 Conn. 922 (1996) (charged murder, attempted murder, and attempted assault because factual issue as to intent).

## 2.10-2 Note-Taking

Revised to December 1, 2007

If you took notes during the evidence, you may use them during deliberations and you may discuss your notes with your fellow jurors. Remember that notes are merely aids to your memory and should not be given precedence over your independent recollection of the evidence. If there is a conflict between your recollection and your notes or the notes of any other juror, it is your recollection of the evidence that must prevail.

Your notes or the notes of any other juror are not evidence. You will recall my earlier definition of what constitutes evidence. Your verdict must be based exclusively on evidence presented at trial and the principles of law given to you in these final instructions.

A juror who has not taken notes should rely on his or her recollection of the evidence and should not be influenced by the fact that other jurors have taken notes. Notes are only a tool and are not always accurate. Do not assume that a voluminous note-taker has taken notes that are necessarily more accurate than your memory.

You may discuss your notes with your fellow jurors during the deliberation phase. The decision to do so is yours and yours alone. After the trial is concluded all notes will be collected by the court staff and destroyed.

I remind you that you have the right to request portions of the testimony to be read back to you, if you deem it essential during your deliberations. You will have all the exhibits with you during your deliberations.

## 2.10-3 Sympathy / Bias

Revised to June 12, 2015

In deciding whether the defendant is guilty or not guilty, you should not concern yourselves with the punishment or potential consequence in the event of a conviction. This is a matter exclusively within the court's function under the limitations and restrictions imposed by statute. You are to find the defendant guilty or not guilty uninfluenced by the possible punishment or consequence that may follow conviction.

You should not be influenced by any sympathy for the defendant, the defendant's family, the (complainant / decedent), the (complainant's / decedent's) family, or for any other person who might in any way be affected by your decision.

In addition, as I indicated earlier, your verdict must be based on the evidence and you may not go outside the evidence to find facts; that is, you may not resort to guesswork, conjecture or suspicion, and you must not be influenced by any personal likes or dislikes, opinions, prejudices, biases or sympathy. You should be aware of the possibility that you have implicit biases. Being aware of the possibility of such biases may help you avoid their influence throughout your decision-making process.

In sum, your task is to render a verdict based on facts and not on concerns about punishment, sympathy, prejudice or bias. I instruct you that decisions based upon biases for or against other people or stereotypes regarding other people have no place in the courtroom.

### *Commentary*

The second paragraph was cited in *State v. James*, 54 Conn. App. 26, 49, cert. denied, 251 Conn. 903 (1999), as curative of improper statements of prosecutor that appealed to the jury's sympathy.

## 2.10-4 When Jury Fails to Agree ("Chip Smith")

Revised to December 1, 2007

The instructions that I shall give you now are only to provide you with additional information so that you may return to your deliberations and see whether you can arrive at a verdict.

Along these lines, I would like to state the following to you. The verdict to which each of you agrees must express your own conclusion and not merely the acquiescence in the conclusion of your fellow jurors. Yet, in order to bring your minds to a unanimous result, you should consider the question you have to decide not only carefully but also with due regard and deference to the opinions of each other.

In conferring together, you ought to pay proper respect to each other's opinions and listen with an open mind to each other's arguments. If the much greater number of you reach a certain conclusion, dissenting jurors should consider whether their opinion is a reasonable one when the evidence does not lend itself to a similar result in the minds of so many of you who are equally honest and equally intelligent, who have heard the same evidence with an equal desire to arrive at the truth and under the sanctions of the same oath.

But please remember this. Do not ever change your mind just because other jurors see things differently or to get the case over with. As I told you before, in the end, your vote must be exactly that -- your own vote. As important as it is for you to reach a unanimous agreement, it is just as important that you do so honestly and in good conscience.

What I have said to you is not intended to rush you into agreeing on a verdict. Take as much time as you need to discuss the matter. There is no need to hurry.

### *Commentary*

This charge was adopted by the Supreme Court in *State v. O'Neil*, 261 Conn. 49, 74 (2002).

## 2.10-5 When Alternate Juror Empaneled after Deliberations have Begun

New, May 10, 2012

As you know, juror # \_\_\_ was excused from the jury. It was a decision of the court to excuse (him/her), and an alternate juror has been selected to take (his/her) place. Please do not speculate on the reason why that juror was excused.<sup>1</sup>

As of this moment, you are a new jury, and you must start your deliberations over again. The parties have the right to a verdict reached by (six / twelve) jurors who have had the full opportunity to deliberate from start to finish. The alternate juror has no knowledge of any earlier deliberations. Consequently, the new deliberating jury must start over at the very beginning of deliberations. Each member of the original deliberating jury must set aside and disregard whatever may have occurred and anything which may have been said in the jury room following my instructions to you. You must give no weight to any opinion expressed by juror # \_\_\_ during deliberations before (he/she) was excused. Together, as a new jury, you must consider all evidence presented at trial as part of your full and complete deliberations until you reach your verdict.

---

<sup>1</sup> If the reason for the juror's dismissal is neutral, it is usually best to explain it to the remaining jurors.

### *Commentary*

When a juror must be dismissed after deliberations have begun, the court has two options:

Practice Book § 42-3 provides that the parties may stipulate, in writing and with the court's approval, to have the verdict rendered by a number of jurors fewer than that prescribed by law. The defendant must be advised as to his or her right to a trial by a full jury and personally waive that right in writing or in open court on the record.

An alternate juror may be made a member of the panel. General Statutes § 54-82h (c) requires that the jury be instructed to begin deliberations anew. Before this, however, the court must first assess the jury's realistic ability to do so, considering the length and nature of the deliberations at the time the juror was excused and the amount, if any, of re-instruction or testimony playback that has occurred. The court should canvass the jurors as to whether they will be able to recommence deliberations and disregard anything that had been said or any conclusions they might have drawn based on their discussions. See *State v. Williams*, 231 Conn. 235, 240-45 (1994). The above instruction should then be given to the reconstituted jury.

Note that prior to October 1, 2000, General Statutes § 54-82h (c) required that alternates be dismissed when the case was given to the jury. See *State v. Murray*, 254 Conn. 472, 493-94 (2000). It is now optional. The court should ensure that the alternate has not been exposed to any prejudicial information since his or her dismissal. See *State v. Williams*, supra, 231 Conn. 240.

## **2.10-6 When Jury Poll Reveals Lack of Unanimity**

New, November 6, 2014

It appears from the answers given from the polling of the jury that your verdict is not unanimous. As I previously instructed you, the court cannot accept a verdict of guilty or not guilty unless it is unanimous. I must therefore ask that you return to the jury room and continue your deliberations to see whether you can reach a unanimous verdict, in light of all of the instructions that I have given you.

### ***Commentary***

See *U.S. v. McDonald*, 759 F.3rd 220, 225 n.5 (2nd Cir. 2014)

## **2.11 COMMON SEGMENTS OF OFFENSE INSTRUCTIONS**

**These instructions do not stand alone, but are commonly incorporated into instructions on specific offenses.**

**2.11-1 Possession**

**2.11-2 Lesser Included Offenses**

**2.11-3 Conclusion: Guilty / Not Guilty**

**2.11-4 Sentence Enhancers**

**2.11-5 Commission of a Class A, B or C Felony  
with an Assault Weapon or a Firearm -- §  
53-202j and § 53-202k**

**2.11-6 Specific Unanimity**

## 2.11-1 Possession

Revised to November 17, 2015

**Note: "Possess" is defined by General Statutes § 53a-3 (2) as "to have physical possession or otherwise to exercise dominion or control over tangible property." A complete instruction on possession may require explanations of constructive possession and nonexclusive possession if relevant to the case. Tailor this instruction according to the specific allegations of possession.**

"Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.

Possession also requires knowledge. The defendant must have knowingly possessed the (substance / object). A person acts knowingly with respect to the possession of something when (he/she) is aware that (he/she) is in possession of it and is aware of the character of it. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of a *<insert substance or object allegedly possessed>*. *<See Knowledge, Instruction 2.3-3.>*

### **Constructive possession**

"Possession" does not mean that one must have the illegal (substance/object) upon one's person. Rather, a person who, although not in actual possession, knowingly has the power and the intention at a given time to exercise control over a thing is deemed to be in constructive possession of that item. As long as the (substance / object) is or was in a place where the defendant could, if (he/she) wishes, go and get it, it is in (his/her) possession.

The mere presence of the defendant (at the premises / in the vehicle) where the (substance / object) is found is not sufficient to support a finding of constructive possession. However, presence may be a material and probative factor for you to consider along with all of the other evidence.

If the defendant was the only person occupying the (premises / vehicle), then you may infer that (he/she) was in possession of the (substance / object), if such inference is reasonable under all the circumstances of the case.

If the defendant is not in exclusive possession of the premises where the illegal item is found, it may not be inferred that (he/she) knew of the presence of the illegal item and had control of it, unless there are other incriminating statements or circumstances tending to support that inference. If the evidence shows that more than one person had access to the (premises / vehicle), i.e., there was more than one occupant of the (premises / vehicle), then the defendant's knowledge and intent to possess the (substance / object) must be established by evidence other than the mere fact that the defendant, along with others, occupied or had access to the (premises / vehicle) where the (substance / object) was found.

### ***Commentary***

"In criminal law, the word 'possession' generally denotes an intentional control of a designated thing accompanied by knowledge of its character. . . . Mere presence in the vicinity of stolen property does not establish possession." (Citations omitted.) *State v. Kas*, 171 Conn. 127, 130 (1976); see also *State v. Gooden*, 89 Conn. App. 307, 316-17, cert. denied, 275 Conn. 918-19 (2005) (reversed because instruction failed to require knowledge of the character of the substance); *State v. Smith*, 38 Conn. App. 29, 42 (1995) (court adequately explained that possession "signifies intentional control of a designated thing accompanied by a knowledge of its character").

"The essence of exercising control is not the manifestation of an act of control but instead it is the act of being in a position of control coupled with the requisite mental intent. In our criminal statutes involving possession, this control must be exercised intentionally and with knowledge of the character of the controlled object." *State v. Hill*, 201 Conn. 505, 516 (1986); see also *State v. Jarrett*, 82 Conn. App. 489, 495-96, cert. denied, 269 Conn. 911 (2004) (instruction that defendant must exercise direct control over the alleged contraband was sufficient); *State v. Respass*, 256 Conn. 164, 181-84, cert. denied, 534 U.S. 1002, 122 S.Ct. 478, 151 L.Ed.2d 392 (2001) (control must be intentional); *State v. Fasano*, 88 Conn. App. 17, 25, cert. denied, 274 Conn. 904 (2005), cert. denied, 546 U.S. 1101, 126 S.Ct. 1037, 163 L.Ed.2d 873 (2006) ("control of the object must be exercised intentionally").

### ***Constructive possession***

Constructive possession is "possession without direct physical contact." *State v. Davis*, 84 Conn. App. 505, 510, cert. denied, 271 Conn. 922 (2004). As with actual possession, "it is necessary to establish that the defendant knew the character of the substance, knew of its presence and exercised dominion and control over it." *Id.* "One factor that may be considered in determining whether a defendant is in constructive possession of narcotics is whether he is in possession of the premises where the narcotics are found." *State v. Smith*, 94 Conn. App. 188, 193, cert. denied, 278 Conn. 906 (2006) (sufficient facts that defendant had exclusive control of motor vehicle). "[O]ne who owns or exercises dominion or control over a motor vehicle in which a contraband substance is concealed may be deemed to possess the contraband." (Internal quotation marks omitted.) *State v. Delassantos*, 211 Conn. 258, 277-78, cert. denied, 493 U.S. 866, 110 S.Ct. 188, 107 L.Ed.2d 142 (1989).

### ***Nonexclusive possession***

"Where the defendant is not in exclusive possession of the premises where the [illegal item is] found, it may not be inferred that [the defendant] knew of the presence of the [illegal item] and had control of [it], unless there are other incriminating statements or circumstances tending to buttress such an inference. . . . The doctrine of nonexclusive possession was designed to prevent a jury from inferring a defendant's possession of [an illegal item] solely from the defendant's nonexclusive possession of the premises where the [illegal item was] found. . . . When the doctrine applies, an instruction focuses the jury's attention on the defendant's knowledge and intent to possess, precluding it from inferring possession from the mere fact that the defendant, along with others, occupied or had access to the premises wherein the contraband was found." (Citations omitted; internal quotation marks omitted.) *State v. Williams*, 258 Conn. 1, 7-8 (2001). "The doctrine of nonexclusive possession provides that where there exists access by two or more people to the [contraband] in question, there must be something more than

the mere fact that [contraband was] found to support the inference that the [contraband was] in the possession or control of the defendant. . . . Thus, the charge is appropriate in circumstances where the defendant has possession of the premises along with at least one other individual." (Citation omitted; internal quotation marks omitted.) *Id.*, 11. See also *State v. Johnson*, 316 Conn. 45, 62 (2015) (distinguishing control over premises from control over the contraband); *State v. Nesmith*, 220 Conn. 628, 632-36 (1991) (evidence did not support instruction on nonexclusive possession); *State v. Alfonso*, 195 Conn. 624, 634 (1985) (no circumstantial evidence from which the jury could infer that defendant was aware of the presence of the marijuana in the apartment); *State v. Straub*, 90 Conn. App. 147, 152-53, cert. denied, 275 Conn. 927 (2005) (sufficient that court instructed that possession required more than mere presence); *State v. Brunori*, 22 Conn. App. 431, 436-37, cert. denied, 216 Conn. 814 (1990) (discussing evidence sufficient to support constructive possession of contraband found in a public place).

## 2.11-2 Lesser Included Offenses

Revised to December 1, 2007 (modified May 23, 2013)

**Note:** This instruction provides a basic structure for instructing on lesser included offenses.

The defendant is charged [in count \_\_\_\_] with *<insert charged or greater offense>*.

*<Instruct on the elements of the greater offense.>*

If you have unanimously found the defendant not guilty of the crime of *<insert greater offense>*, you shall then consider the lesser offense of *<insert the first lesser included offense>*. Do not consider the lesser offense unless and until you have unanimously acquitted the defendant of the greater offense.

*<Instruct on the elements of the first lesser included offense.>*

If you have unanimously found the defendant not guilty of the crime of *<insert previous offense>*, you shall then consider the lesser offense of *<insert the next lesser included offense>*. Do not consider this offense unless and until you have unanimously acquitted the defendant of *<insert previous offense>*.

*<Instruct on the elements of the next lesser included offense.>*

*<Repeat until jury is instructed on all lesser included offenses.>*

### **Commentary**

An "acquittal first" instruction is mandated by *State v. Sawyer*, 227 Conn. 566 (1993). This means that "the court must direct the jury to reach a unanimous decision on the issue of guilt or innocence of the charged offense before going on to consider the lesser included offenses." *Id.*, 579. See also *State v. Alonzo*, 131 Conn. App. 1, cert. denied, 303 Conn. 912 (2011) (applying a state constitutional analysis to the acquit first rule).

"[I]n close cases, the trial court should generally opt in favor of giving an instruction on a lesser included offense, if it is requested. . . . Otherwise the defendant would lose the right to have the jury pass upon every factual issue fairly presented by the evidence." (Internal quotation marks omitted.) *State v. Tomasko*, 238 Conn. 253, 261 (1996). "[I]t is settled that a jury should be given the entire range of possible verdicts in a case in which the evidence warrants the giving of the lesser included offenses, [and] it follows that defenses that are supported by a reasonable construction of the evidence should be given along with those same lesser charges." (Internal quotation marks omitted.) *State v. Hall*, 213 Conn. 579, 588 (1990).

If the jury convicts the defendant of "greater and lesser offenses, the trial court must vacate the conviction for the lesser offense rather than merging the convictions." *State v. Polanco*, 308 Conn. 242, 245 (2013).

### ***The Whistnant test***

"A defendant is entitled to an instruction on a lesser offense if, and only if, the following conditions are met: (1) an appropriate instruction is requested by either the state or the defendant; (2) it is not possible to commit the greater offense, in the manner described in the information or bill of particulars, without having first committed the lesser; (3) there is some evidence, introduced by either the state or the defendant, or by a combination of their proofs, which justifies conviction of the lesser offense; and (4) the proof on the element or elements which differentiate the lesser offense from the offense charged is sufficiently in dispute to permit the jury consistently to find the defendant innocent of the greater offense but guilty of the lesser." *State v. Whistnant*, 179 Conn. 576, 588 (1980).

#### *First prong - proper request*

The first prong is satisfied if the request complies with Practice Book § 42-18. It may also be satisfied "when the record indicates that the trial court knew the precise point to which the defendant wished to call attention. . . . Indeed, even partial compliance with § 42-18, accompanied by substantial additional support in the record from either party, such as detailed colloquies with the court and opposing counsel and a postcharge exception, will also satisfy the first prong of *Whistnant*. This is true as long as the trial court is informed adequately of the factual and legal basis for the instructional request." (Citations omitted; internal quotation marks omitted.) *State v. Smith*, 262 Conn. 453, 466 (2003); see also *State v. Colon*, 272 Conn. 106, 224 n.78 (2004). For cases upholding the trial court's refusal to instruct on a lesser included offense due to the inadequacy of the request, see *State v. Arreaga*, 75 Conn. App. 521 (2003) (request contained only a general statement of facts and citations to the relevant statutes); *State v. Corbin*, 260 Conn. 730, 746-47 (2002) (request confusing because charges not separated into separate paragraphs).

#### *Second prong - cognate pleadings*

The second prong of *Whistnant* "encompasses the cognate pleadings approach . . . [which] does not insist that the elements of the lesser offense be a subset of the higher offense. It is sufficient that the lesser offense have certain elements in common with the higher offense, which thereby makes it a 'cognate' or 'allied' offense even though it also has other elements not essential to the greater crime. [In addition], the relationship between the offenses is determined not by a comparison of statutory elements in the abstract, but by reference to the pleadings in the case. The key ordinarily is whether the allegations in the pleading charging the higher offense . . . include all of the elements of the lesser offense." (Internal quotation marks omitted.) *State v. Tomlin*, 266 Conn. 608, 618 (2003).

"[O]ne crime is not a lesser included offense of another if the greater can be committed *without a simultaneous commission of the lesser*." (Emphasis in original.) *State v. Fuller*, 56 Conn. App. 592, 605, cert. denied, 252 Conn. 949, cert. denied, 531 U.S. 911, 121 S. Ct. 262, 148 L. Ed. 2d 190 (2000). "[T]he lesser offense must not require any element which is not needed to commit the greater offense in the manner alleged in the information or the bill of particulars." *Id.*, 603. "Under the second prong of *Whistnant*, we must look only to the information and cannot resort to the evidence." *Id.*, 607 n.20.

### Third prong - sufficient evidence

"[I]n order to meet the third prong of the *Whistnant* test, there must be sufficient evidence, introduced by either the state or the defendant, or by a combination of their proofs, to justify a finding of guilt of the lesser offense." *State v. Rasmussen*, 225 Conn. 55, 67-68 (1993) (finding that the evidence, if believed, compelled the conclusion that the defendant intended to kill the victim, so he was not entitled to instruction on manslaughter). See also *State v. Arena*, 235 Conn. 67, 78-79 (1995) (no evidence to support instruction on robbery 2nd); *State v. Sivri*, 231 Conn. 115, 138-39 (1994) (sufficient evidence that defendant may not have had the intent to kill); *State v. Solek*, 66 Conn. App. 72, 83-85, cert. denied, 258 Conn. 941 (2001) (insufficient evidence that defendant intended anything other than to kill victim).

### Fourth prong - issue in dispute

"[E]vidence of the differentiating element is 'sufficiently in dispute' where it is of such a factual quality that would permit the finder of fact reasonably to find the defendant guilty on the lesser included offense." (Internal quotation marks omitted.) *State v. Preston*, 248 Conn. 472, 477-78 (1999) (no evidence to support the inference that use of force was in furtherance of escape only rather than robbery); *State v. Rozmyslowicz*, 52 Conn. App. 149, 157 (1999) (evidence of larcenous intent not sufficiently in dispute to permit lesser included offense of using motor vehicle without permission); *State v. Ray*, 228 Conn. 147, 152-58 (1993) (defendant's state of mind sufficiently in dispute to entitle him to instruction on criminally negligent homicide); *State v. Montanez*, 219 Conn. 16, 23-24 (1991) (jury could not have reasonably concluded that the defendant acted recklessly rather than intentionally); *State v. Solek*, supra, 66 Conn. App. 85 (element of intent not sufficiently in dispute); *State v. Reed*, 56 Conn. App. 428, 433-36, cert. denied, 252 Conn. 945 (2000) (no reasonable doubt that money was taken by the defendant).

### ***Multiple lesser-included offenses***

In some cases, there may be two or more lesser included offenses that are not related to one another as lesser or greater offenses. For example, manslaughter in the first degree pursuant to § 53a-55 (a) (1) and manslaughter in the first degree pursuant to § 53a-55 (a) (3) are both lesser included offenses of murder, and may both be given if the evidence warrants, but manslaughter under subsection (a) (3) is not a lesser included offense of manslaughter under subsection (a) (1). See *State v. Maselli*, 182 Conn. 66, 72 (1980), cert. denied, 449 U.S. 1083, 101 S.Ct. 868, 66 L.Ed.2d 807 (1981); *State v. Billie*, 47 Conn. App. 678, 687 (1998). Use caution when instructing the jury in this situation. *State v. Dyson*, 217 Conn. 498, 503 (1991), suggests that an acquittal first instruction may be "inaccurate."

### ***Partial verdicts***

"[*State v.*] *Sawyer*[, 227 Conn. 566 (1993),] and the guarantees provided by the double jeopardy clause dictate that: (1) it is a valid verdict for the jury to acquit the accused of a greater offense and only thereafter to reach a deadlock on a lesser offense; (2) such a valid verdict must be accepted; and, finally, (3) the failure to accept that valid verdict would violate the constitutional protection against double jeopardy." *State v. Tate*, 256 Conn. 262, 284-85 (2001).

If the defendant requests the court to conduct an inquiry as to whether the jury has reached a partial verdict, the court is obligated to do so prior to declaring a mistrial. *Id.*, 286-87. The court, however, has no duty to sua sponte inquire. *Id.*, 286 n.16. It may be the better

practice to ask, because if it is unknown which of the charges the jury is deadlocked on, the defendant may only be retried after mistrial on the least of the offenses. *Id.*, 288-89.

If the jury deadlocks on the greater offense, the trial court must declare a mistrial as to both the greater and the lesser included offenses. *State v. Salgado*, 257 Conn. 394, 407 (2001).

## 2.11-3 Conclusion: Guilty / Not Guilty

Revised to December 1, 2007

**Note:** This is a model conclusion for offense instructions, which is incorporated into all the instructions. It has alternative endings for when a general or affirmative defense has been raised.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that *<summarize elements of offense.>*

*<Select one of the three alternative endings:>*

#### **If defendant has not raised a defense**

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of *<insert name of offense>*, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

#### **If defendant has raised an affirmative defense**

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of *<insert name of offense>*, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved (his/her) defense by a preponderance of the evidence, then you shall find the defendant not guilty. If, on the other hand, you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

#### **If defendant has raised a general defense**

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of *<insert name of offense>*, you shall then find the defendant not guilty and not consider (his/her) defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defense of *<identify defense>*. If you unanimously find that the state has disproved beyond a reasonable doubt at least one of the elements of the defense, you must reject that defense and find the defendant guilty. If, on the other hand, you unanimously find that the state has not disproved beyond a reasonable doubt at least one of the elements of the defense, then on the strength of that defense alone you must find the defendant not guilty of *<insert name of offense>* despite the fact that you have found the elements of that crime proven beyond a reasonable doubt.

## 2.11-4 Sentence Enhancers

Revised to December 1, 2007 (modified June 13, 2008)

In connection with your deliberations on the crime of *<insert name of offense>*, if, but only if, you return a verdict of guilty you must also answer the question, which we call an interrogatory, that I will send in with you.

I am in no way suggesting what your verdict on this charge should be. If it's guilty, answer the interrogatory. If it's not guilty, ignore it.

Should you reach the interrogatory, your decision must be unanimous.

Your foreperson should check the appropriate answer and sign and date the form.

### *Commentary*

Many offenses have sentence enhancers that require a factual finding from the jury. These are noted in the commentaries to those offenses. Such factual findings should not be incorporated into the body of the instruction on the offense, as this has the potential of misleading the jury to think that the fact must be proved in order to find the defendant guilty of the offense. It is recommended that the factual question be submitted to the jury by way of an interrogatory. This instruction should be given after you have instructed the jury on the offense.

If the statute defining an offense provides an enhanced sentence on the basis of a prior conviction, it must be charged in a Part B information. Practice Book § 36-14. See Subsequent Offenders, Instruction 2.12-2.

Below is an example of the text of the interrogatory:

#### **INTERROGATORY - COUNT \_\_**

You will answer the following interrogatory if, but only if, you have found the defendant guilty of *<insert name of offense>* as charged in count \_\_. If you have found (him/her) not guilty of that charge, do not answer it.

This submission in no way suggests what your verdict should be.

If you reach the following interrogatory, your conclusion must be unanimous.

#### **INTERROGATORY**

Has the state proven to all of you unanimously beyond a reasonable doubt that *<specify the factual finding to be made>*.

Yes \_\_\_\_\_

No \_\_\_\_\_

Foreperson \_\_\_\_\_

Date \_\_\_\_\_

N.B. Foreperson must sign and date in ink.

## **2.11-5 Commission of a Class A, B or C Felony with an Assault Weapon or a Firearm -- § 53-202j and § 53-202k**

New, June 13, 2008

**Note:** There is no instruction for these statutes.

### *Commentary*

General Statutes § 53-202j and § 53-202k provide for an enhanced sentence if a defendant uses an assault weapon (§ 53-202j) or a firearm (§ 53-202k) in the course of the commission of a class A, B or C felony. They are not separate offenses. *State v. Dash*, 242 Conn. 143, 148 (1997) (interpreting § 53-202k).

Although the jury must determine that the defendant used a firearm in the course of the commission of the crime for which he or she is convicted, it is not necessary for the court to conduct a separate Part B proceeding. *State v. Velasco*, 253 Conn. 210, 225 (2000).

The factual finding that the defendant used a firearm in the course of the commission of the crime may be submitted to the jury in an interrogatory. See Sentence Enhancers, Instruction 2.11-4.

A defendant convicted as an accomplice, who was unarmed at the time of the offense, is liable to the sentence enhancement of § 53-202k if the principle was armed. *State v. Davis*, 255 Conn. 782, 787 (2001).

## 2.11-6 Specific Unanimity

New, May 20, 2011

The state has alleged that the defendant has committed the offense of *<insert name of offense>* in two different ways, *<identify the two way of committing the offense>*. You may find the defendant guilty of the offense only if you all unanimously agree on which of the two ways the defendant committed the offense. This means you may not find the defendant guilty unless you all agree that the state has proved beyond a reasonable doubt that the defendant *<insert first theory of culpability>* or you all agree that the state has proved beyond a reasonable doubt that the defendant *<insert second theory of culpability>*.

### Commentary

When a statute provides alternative ways of committing a crime, the jury must be unanimous on which of the alternatives has been proved only if the alternatives are conceptually distinct. *State v. Benite*, 6 Conn. App. 667, 675 (1986) (the three alternatives in burglary in the first degree, § 53a-101, are conceptually distinct).

Unanimity is not required when the prohibited conduct described in the statute may be satisfied in various ways. In other words, the focus is on the nature of the prohibited conduct, not the various ways one can engage in such conduct. See *State v. Dyson*, 238 Conn. 784, 794-95 (1996) (the six verbs in the accessory statute, § 53a-8 (a), all describe the conduct of furthering a crime); *State v. Tucker*, 226 Conn. 618, 648 (1993) ("the use of force or the threat of the use of force," when both were alleged, were merely two means of compelling another person and were not conceptually distinct); *State v. James*, 211 Conn. 555, 584-85 (1989) (whether the injury was to the health or morals of the child was of no consequence in assessing the defendant's conduct); *State v. Bailey*, 82 Conn. App. 1, cert. denied, 269 Conn. 913 (2004) (various facts supported the alleged fact of possession of marijuana with intent to sell; the jury only had to be unanimous that at least one of them proved possession); *State v. Anderson*, 16 Conn. App. 346, 357-58, cert. denied, 209 Conn. 828 (1988) (no agreement necessary as to whether the victim suffered serious physical injury due to a risk of death, disfigurement or impairment); *State v. Mancinone*, 15 Conn. App. 251, 274, cert. denied, 209 Conn. 818 (1988), cert. denied, 489 U.S. 1017, 109 S. Ct. 1132, 103 L. Ed. 2d 194 (1989) (risk of injury allegations all involved ways of creating a harmful situation).

"In situations where the alternatives of the mens rea component give rise to the same criminal culpability, it does not appear critical that the jury may have reached different conclusions regarding the nature of the defendant's intent if such differences do not reflect disagreement on the facts pertaining to the defendant's conduct." *State v. Luster*, 48 Conn. App. 872, 878, cert. denied, 246 Conn. 901 (1998) (the jury did not have to agree which crime the defendant intended to commit when he entered the building); *State v. Marsala*, 43 Conn. App. 527, 539 (1996), cert. denied, 239 Conn. 957 (1997) (on a harassment charge, jury did not have to agree on whether the defendant's intent was to annoy, harass, or alarm the victim).

## **2.12 PART B INFORMATIONS**

### **2.12 Introduction**

#### **2.12-1 Persistent Offenders -- § 53a-40, § 53a-40a, § 53a-40d and § 53a-40f**

#### **2.12-2 Subsequent Offenders**

#### **2.12-3 Commission of a Crime while on Release -- § 53a-40b**

## 2.12 Introduction

New, June 13, 2008

When the state seeks an enhanced penalty due to a prior conviction, the offense must be charged in a two-part information. Practice Book § 36-14. A two-part information does not charge one crime in the first part and a second crime in the second part. The first part relates only to the commission of the crime charged, wholly unrelated to penalty. It is only after the second part has been determined that the penalty attaches to the crime proven under the first part. *State v. LaSelva*, 163 Conn. 229, 233-34 (1972); *State v. Torma*, 21 Conn. App. 496, 505 (1972) (enhanced penalty cannot be imposed unless charged in a two-part information).

The existence of a Part B information should not be revealed to the fact-finder so as to not influence the disposition of the claim contained in Part A. *State v. Fitzgerald*, 257 Conn. 106, 117 (2001). See Practice Book §§ 36-14, 37-10, 37-11 and 39-23 for the rules of court relating to two-part informations. See also *State v. Ferrone*, 96 Conn. 160, 175 (1921) (discussing the origin of the procedure).

## 2.12-1 Persistent Offenders -- § 53a-40, § 53a-40a, § 53a-40d and § 53a-40f

Revised to November 17, 2015

In the second part of the information, the defendant has been charged with being a *<insert appropriate statute and subsection:>*

- § 53a-40 (a): persistent dangerous felony offender.
- § 53a-40 (b): persistent dangerous sexual offender.
- § 53a-40 (c): persistent serious felony offender.
- § 53a-40 (d): persistent serious sexual offender.
- § 53a-40 (e): persistent larceny offender.
- § 53a-40 (f): persistent offender for possession of a controlled substance.<sup>1</sup>
- § 53a-40 (g): persistent felony offender.
- § 53a-40a (a): persistent offender of crimes involving bigotry or bias.
- § 53a-40d (a): persistent offender of crimes involving (assault / stalking / trespass / threatening / harassment / criminal violation of a protective order / criminal violation of a standing criminal protective order / criminal violation of a restraining order).
- § 53a-40f (a): persistent operating while under the influence felony offender.

A person is guilty of being a *<insert type of persistent offender charged>* when that person stands convicted of *<insert crime>*, and has been, prior to the commission of that offense, convicted of *<insert prior crime[s]>* [and imprisoned under a sentence to a term of imprisonment of more than one year or death in (this state / any other state / a federal correctional institution)].<sup>2</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Current conviction**

The first element is that the defendant has been convicted of *<insert crime>* in this case. The verdict you just rendered, finding the defendant guilty of *<insert crime>*, satisfies this element.

### **Element 2 - Prior conviction<sup>3</sup>**

The second element is that prior to *<insert date the current crime was committed>*, the defendant was convicted of *<insert prior crime<sup>4</sup>>* [and imprisoned under a sentence to a term of imprisonment of more than one year or death in (this state / any other state / a federal correctional institution).] To be "convicted" of a crime means that a finding of guilty has been entered against a defendant in a criminal or motor vehicle case.

[*<If applicable; see note 2.>* The state need only prove that the defendant served some amount of time in confinement under a sentence having a term that exceeded one year. The crucial element of the statute is that the imposed term exceeded one year; however, the defendant is not required to have actually served one year in prison but is only required to have been imprisoned.<sup>5</sup>]

## Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant has been convicted of <insert crime>, and that (he/she) had previously been convicted of <insert crime> [and imprisoned under a sentence to a term of imprisonment of more than one year or death in (this state / any other state / a federal correctional institution)].

You will now return to the deliberation room to consider this question. I am sending in with you a form on which to record your answer. Your decision must be unanimous. Your foreperson should check the appropriate answer and sign and date the form. Refer back to and use the instructions I previously gave you on burden of proof, presumption of innocence, and reasonable doubt.

---

<sup>1</sup> The persistent offender for possession of a controlled substance was added by Public Acts, Spec. Sess., June 2015, No. 2, § 19, effective October 15, 2015.

<sup>2</sup> The requirement of imprisonment applies only to § 53a-40 (a), (b), (c), and (d).

<sup>3</sup> Prior to October 1, 2010, § 53a-40d (a) (2) required that the prior conviction, or release from imprisonment, be within the 5 years before the subsequent crime. That provision was deleted by P.A. No. 10-144, § 12.

<sup>4</sup> Sections 53a-40 (a) (1) and (2), 53a-40 (b), 53a-40d, and 53a-40f provide that the prior conviction may be a conviction in another state of "any crime the essential elements of which are substantially the same as any of the crimes" in Connecticut that qualify the defendant as a persistent offender. The determination of whether an out-of-state offense is substantially similar to a Connecticut offense is a question of law for the court to decide. *State v. Commins*, 276 Conn. 503, 513 (2010).

<sup>5</sup> *State v. Milardo*, 224 Conn. 397, 419 (1993).

### Commentary

In *State v. Ledbetter*, 240 Conn. 317, 321 (1997), the Supreme Court "interpret[ed] the language of § 53a-40 (d) and its legislative purpose to require a sequence of offense, conviction and punishment for each prior felony before a defendant may be subject to an enhanced penalty as a persistent offender." This presumably applies to the other persistent offender statutes.

In *State v. Rogers*, 128 Conn. App. 765, 776, cert. denied, 301 Conn. 935 (2011), the Appellate Court held that unclassified felonies qualify as prior convictions under § 53a-40 (f), which requires that a defendant be "twice convicted of a felony other than a class D felony."

It is recommended that the factual question of the defendant's status as a persistent offender be submitted to the jury by way of an interrogatory after it has rendered its verdict on Part A of the information. Below is an example of the text of the interrogatory:

**INTERROGATORY**

Has the state proven to all of you unanimously beyond a reasonable doubt that the defendant is a *<insert type of persistent offender charged>*?

Yes \_\_\_\_\_

No \_\_\_\_\_

Foreperson \_\_\_\_\_

Date \_\_\_\_\_

N.B. Foreperson must sign and date in ink.

## 2.12-2 Subsequent Offenders

Revised to June 12, 2009 (modified May 20, 2011)

In the second part of the information, the defendant has been charged as a (second / third / subsequent) offender of the crime of *<insert crime>*. A person is guilty of being a (second / third / subsequent) offender of the crime of *<insert crime>* when that person stands convicted of *<insert crime>*, and has been, prior to the commission of that offense, convicted of that same crime on (a prior occasion / two or more separate prior occasions).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Current conviction**

The first element is that the defendant has been convicted of *<insert crime>* in this case. The verdict you just rendered, finding the defendant guilty of *<insert crime>*, satisfies this element.

### **Element 2 - Prior conviction**

The second element is that prior to *<insert date the current crime was committed>*, the defendant was convicted of *<insert crime and number of convictions if applicable>*. To be "convicted" of a crime means that a finding of guilty has been entered against a defendant in a criminal or motor vehicle case.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant has been convicted of *<insert crime>*, and that (he/she) had previously been convicted of *<insert crime>*.

You will now return to the deliberation room to consider this question. I am sending in with you a form on which to record your answer. Your decision must be unanimous. Your foreperson should check the appropriate answer and sign and date the form. Refer back to and use the instructions I previously gave you on burden of proof, presumption of innocence, and reasonable doubt.

### ***Commentary***

Many offenses have sentence enhancers based on prior convictions for the same offense. These are noted in the commentaries to those offenses. When the state seeks an enhanced penalty due to a prior conviction, the offense must be charged in a two-part information. Practice Book § 36-14. See the Introduction to Part B Informations.

It is recommended that the factual question of the defendant's status as a subsequent offender be submitted to the jury by way of an interrogatory after it has rendered its verdict on Part A of the information. Below is an example of the text of the interrogatory:

**INTERROGATORY**

Has the state proven to all of you unanimously beyond a reasonable doubt that the defendant is a (second / third / subsequent) offender?

Yes \_\_\_\_\_

No \_\_\_\_\_

Foreperson \_\_\_\_\_

Date \_\_\_\_\_

N.B. Foreperson must sign and date in ink.

Note that in Driving Under the Influence, § 14-227a, and Driving Under the Influence, Under 21 Years Old, § 14-227g, the statute distinguishes between a second and a third offense. If the state offers evidence of two prior convictions, the jury is free to find only one of them proved. This interrogatory should be adapted to allow the jury to find the defendant either a second or third offender.

## 2.12-3 Commission of a Crime while on Release -- § 53a-40b

New, May 20, 2010

In the second part of the information, the defendant has been charged with committing a crime while on release. A person is guilty of committing a crime while on release when (he/she) commits a crime after (he/she) has been released from custody following an arrest and there are criminal charges pending against (him/her).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Current conviction**

The first element is that the defendant has been convicted of a crim in this case. The verdict you just rendered, finding the defendant guilty of *<insert crime>*, satisfies this element.

### **Element 2 - On release**

The second element is that at the time the defendant committed the crime of *<insert crime>*, (he/she) was on release. This means that (he/she) had been arrested and was released from custody with criminal charges pending against (him/her). *<Insert specific allegations.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant has been convicted of a crime, and that (he/she) was on release.

You will now return to the deliberation room to consider this question. I am sending in with you a form on which to record your answer. Your decision must be unanimous. Your foreperson should check the appropriate answer and sign and date the form. Refer back to and use the instructions I previously gave you on burden of proof, presumption of innocence, and reasonable doubt.

### ***Commentary***

It is recommended that the factual question of the defendant's status at the time of the commission of the offense be submitted to the jury by way of an interrogatory after it has rendered its verdict on Part A of the information. Below is an example of the text of the interrogatory:

**INTERROGATORY**

Has the state proven to all of you unanimously beyond a reasonable doubt that the defendant was on release when (he/she) committed the crime of *<insert crime>*?

Yes \_\_\_\_\_

No \_\_\_\_\_

Foreperson \_\_\_\_\_

Date \_\_\_\_\_

N.B. Foreperson must sign and date in ink.

# **PART 3: VICARIOUS LIABILITY AND INCHOATE CRIMES**

**3.1 VICARIOUS LIABILITY**

**3.2 ATTEMPT**

**3.3 CONSPIRACY**

## **3.1 VICARIOUS LIABILITY**

### **3.1 Introduction to Vicarious Liability**

#### **3.1-1 Accessories and Accomplices -- § 53a-8 (a)**

#### **3.1-2 Renunciation of Criminal Purpose (Accessory) -- § 53a-10**

#### **3.1-3 Vicarious Liability under *Pinkerton***

#### **3.1-4 Vicarious Liability for Providing a Firearm --§ 53a-8 (b)**

## 3.1 Introduction to Vicarious Liability

Revised to May 20, 2011

A person may be held criminally liable for the acts of another person under three circumstances:

- As an accessory. Accessorial liability pursuant to § 53a-8 (a) is equivalent to liability as a principal and requires proof that the defendant had the specific mental state required for the commission of the substantive offense and acted in furtherance of that crime. See Accessories and Accomplices, Instruction 3.1-1.
- As an accessory for providing a firearm to the actor. Section 53a-8 (b) defines a different type of accessorial liability, which does not require that the person have the same intent, but requires that he or she have knowledge of the other person's intent to commit the crime with the firearm. See Vicarious Liability for Providing a Firearm, Instruction 3.1-4.
- As a coconspirator under *Pinkerton*. *Pinkerton* liability is predicated on an agreement to participate in a conspiracy, and requires proof that the substantive offense was a reasonably foreseeable product of that conspiracy. See Vicarious Liability under *Pinkerton*, Instruction 3.1-3 .

There will be cases in which the evidence may support liability under any of these theories. If a case is presented to the jury in the alternative, the court should instruct the jury that its verdict must be unanimous as to which theory supports liability. *State v. Martinez*, 278 Conn. 598, 619-20 (2006). See Specific Unanimity, Instruction 2.11-6.

## 3.1-1 Accessories and Accomplices -- § 53a-8 (a)

Revised to November 1, 2008 (modified November 6, 2014)

**Note:** This statute does not define a separate crime, but a separate theory of liability. It should be included in the instruction defining the substantive offense, following the elements of that offense. If the state presents alternative theories of vicarious liability, the jury must be unanimous. See Introduction to Vicarious Liability.

**When the defendant is charged only as an accessory, the court, in explaining the elements of the underlying crime, should refer to the fact that the underlying crime was committed by the principal offender rather than the defendant.**

A person is criminally liable for a criminal act if (he/she) directly commits it or if (he/she) is an accessory in the criminal act of another. The statute defining accessorial liability reads in pertinent part as follows:

a person, acting with the mental state required for commission of an offense, who solicits, requests, commands, importunes or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable for such conduct and may be prosecuted and punished as if (he/she) were the principal offender.

This statute does not connect those five acts specified with the word "and" but separates them by the word "or." A person is an accessory if (he/she) solicits or requests or commands or importunes or intentionally aids another person to engage in conduct that constitutes an offense. "Solicit" means to tempt or to entice someone to do wrong; "importune" means to demand or urge; "aid" means to assist, help or support. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. "Intentionally aid," therefore, means to act in any manner, the conscious objective of which is to assist, help or support. <See Intent: Specific, Instruction 2.3-1.>

If the defendant did any of these things as specified in the statute, (he/she) is guilty of <insert substantive crime> as though (he/she) had directly committed it or participated in its commission. To establish the guilt of a defendant as an accessory for assisting in the criminal act of another, the state must prove criminality of intent and community of unlawful purpose.<sup>1</sup> That is, for the defendant to be guilty as an accessory, it must be established that (he/she) acted with the mental state necessary to commit <insert substantive crime>, and that in furtherance of that crime, (he/she) solicited, requested, commanded, importuned or intentionally aided the principal to commit <insert substantive crime>.

Evidence of mere presence as an inactive companion, or passive acquiescence, or the doing of innocent acts which, in fact, aid in the commission of a crime, is insufficient to find the defendant guilty as an accessory under the statute. Nevertheless, it is not necessary to prove that the defendant was actually present or actively participated in the actual commission of the crime of <insert substantive crime>.

## Conclusion

[<If charged only as an accessory:> The rule is that a person who solicits, requests, commands, importunes or intentionally aids in the commission of a crime is guilty of that very crime. Thus, for you to find the defendant guilty of this charge, you must unanimously find that the state has proved beyond a reasonable doubt that the defendant assisted another to commit the crime of <insert substantive crime>. You must also unanimously find beyond a reasonable doubt that the defendant had the intent to commit the crime charged and did solicit, request, command, importune or intentionally aid another in the commission of the crime of <insert charged crime>.]

[<If charged as either an accessory or principal:> For you to find the defendant guilty of this charge, you must unanimously find that the state has proved all the elements of <insert substantive crime> beyond a reasonable doubt. If you conclude that the defendant is guilty as a principal or as an accessory, you do not need to be unanimous regarding whether you believe (he/she) was a principal or accessory as long as all (six / twelve) jurors agree that at least one method (i.e., principal or accessory) has been proved beyond a reasonable doubt.]

<If also charged under a theory of Pinkerton liability, see Vicarious Liability under Pinkerton, Instruction 3.1-3.>

---

<sup>1</sup> Do not include language suggestive of theories of criminal enterprise or conspiracy because it may mislead the jury that it could find the defendant guilty as an accessory without the requisite intent. *State v. Lopez*, 280 Conn. 779, 820-23 (2007); *State v. Diaz*, 237 Conn. 518, 534-41 (1996).

## Commentary

"Under the modern accessory statute, there is no such crime as being an accessory. . . . The accessory statute merely provides alternate means by which a substantive crime may be committed." *State v. Montanez*, 277 Conn. 735, 755-56 (2006); *State v. Gamble*, 27 Conn. App. 1, 9, cert. denied, 222 Conn. 901 (1992). A person may be charged as an accessory even if the principal is not charged or is acquitted of the same crime. *State v. Santiago*, 275 Conn. 192, 204 (2005); *State v. Paredes*, 35 Conn. App. 360, 369-74, cert. denied, 231 Conn. 925 (1994).

To solicit, request, command, importune or intentionally aid "requires only an asking or insistence that an act be done." *State v. Harris*, 32 Conn. App. 831, 841 (1993), appeal dismissed, 230 Conn. 347 (1994). Although the accused must be more than a mere inactive companion, "passive behaviors engaged in with the intent to facilitate the commission of a crime are sufficient to support a finding of accessory liability." *State v. Conde*, 67 Conn. App. 474, 486 (2001), cert. denied, 259 Conn. 927 (2002).

Instructing the jury on accessorial liability is proper when there is evidence that more than one person shot at the victim, but it cannot be concluded which of the shots was fatal. *State v. Fruean*, 63 Conn. App. 466, 472-73, cert. denied, 257 Conn. 908 (2001); *State v. Bagley*, 35 Conn. App. 138, 142-43, cert. denied, 231 Conn. 913 (1994). In *State v. Delgado*, 247 Conn. 616, 627 (1999), the Supreme Court approved a supplemental instruction that read: "Where it cannot be determined who fired the fatal shot, beyond a reasonable doubt, the element of murder

as to who caused the death has not been proved beyond a reasonable doubt. However, persons acting with the mental state required for commission of murder, who intentionally aid one another to engage in . . . such conduct, and cause the death, are accessories to one another, and would be criminally liable for such conduct as accessories to murder."

### ***Mental state required***

A conviction under § 53a-8 (a) requires proof of a dual intent: the intent to aid the principal and the intent to commit the offense. *State v. Santiago*, supra, 275 Conn. 199 n.13; *State v. Garner*, 270 Conn. 458, 475 (2004); *State v. Foster*, 202 Conn. 520, 525-26 (1987). "Mere presence as an inactive companion, passive acquiescence, or the doing of innocent acts which may in fact aid the one who commits the crime must be distinguished from the criminal intent and community of unlawful purpose shared by one who knowingly and wilfully assists the perpetrator of the offense in the acts which prepare for, facilitate or consummate it." (Internal quotation marks omitted.) *Id.*, 531. "[A]bsent evidence of prearrangement, mutual understanding, or concerted action, a defendant cannot be held liable as an accessory unless he encourages the principal by some overt act or oral expression to commit the crime charged. . . . [T]he accused cannot be convicted of the independent crime of a confederate not committed in the execution of a common design, even if the defendant is involved in some other criminal activity." (Internal quotation marks omitted.) *State v. Gonzalez*, 311 Conn. 408, 418-19 (2014).

The Connecticut Supreme Court has not adopted, or expressly rejected, the portion of the Model Penal Code that allows an accessory to be convicted of a different offense or degree of offense than the principal if the accessory had a different mental state. *State v. Floyd*, 253 Conn. 700, 722-23 (2000).

The doctrine of transferred intent applies to accomplice liability for murder. *State v. Henry*, 253 Conn. 354, 363 (2000).

### ***Unanimity***

Because the state must prove, under a theory of accessorial liability pursuant to § 53a-8 (a), that the defendant had the same intent to commit the crime as the principal and intentionally acted in furtherance of the crime, there is no requirement that the jury be unanimous as to principal or accessory. *State v. Correa*, 241 Conn. 322, 398 (1997).

### ***Use of a firearm***

Under the terms of the statute, the accessory is prosecuted and punished "as if he were the principal." Accordingly, once convicted of a felony committed with a firearm, the accessory may be subject to the enhanced sentence under § 53-202k, even though only the principal actually used the firearm. *State v. Davis*, 255 Conn. 782, 787-93 (2001). In addition, crimes that have the use of a firearm as an aggravating factor do not require that the accessory have the intent that the principal use a firearm. *State v. Gonzalez*, 300 Conn. 490, 503-509 (2011).

### ***If also charged with conspiracy***

A defendant may be convicted of conspiracy to commit a crime and the commission of that crime as a principal or accessory. *State v. Green*, 81 Conn App. 152, 158, cert. denied, 268 Conn. 909 (2004) (defendant convicted of sale of narcotics as an accessory and conspiracy to sell narcotics); *State v. Soto*, 59 Conn. App. 500, 503-505, cert. denied, 254 Conn. 950 (2000) (not inconsistent for defendant to be convicted of murder as accessory and acquitted of conspiracy).

***If charged as a principal only***

"[D]ue process considerations preclude a court from instructing a jury that it may convict a defendant under a theory of accessorial liability in certain circumstances. Inherent in the constitutional mandate that a defendant be advised of the 'nature and cause' of the accusations against him is that the defendant be on notice of the nature of the state's prosecution. The state cannot present its case on the theory of principal liability and then, without providing notice to the defendant, seek near the conclusion of the trial to convict the defendant under a theory of accessorial liability." *State v. Vasquez*, 68 Conn. App. 194, 215 (2002); see also *State v. Correa*, 241 Conn. 322, 340-45 (1997) (state presented sufficient evidence to establish accessorial liability); *State v. Steve*, 208 Conn. 38 (1988) (defense prejudiced when the bill of particulars alleged that the defendant was the principal and the state presented no evidence that could support accessorial liability); *State v. Hines*, 89 Conn. App. 440, cert. denied, 275 Conn. 904 (2005) (evidence presented provided defendant sufficient notice that state would seek conviction as an accessory).

***Defense***

See Renunciation of Criminal Purpose (Accessory), Instruction 3.1-2.

Since the commission of a crime is an essential condition precedent to the imposition of accessorial liability for that crime, if the actions of the principal are found to be justified, then no crime has been committed by either party. Hence, if a justification defense is available to the principal, the accessory can also assert it. *State v. Montanez*, 277 Conn. 735, 751-63 (2006).

## 3.1-2 Renunciation of Criminal Purpose (Accessory) -- § 53a-10 (a)

Revised to December 1, 2007

**Note:** This instruction should be narrowly tailored with regard to the evidence presented in the case. Before giving this instruction, the court should instruct on § 53a-8 as it applies to the particular offense. The court should bear in mind its authority to direct the state to be more specific in the factual basis of the allegation.

There has been some evidence presented with regard to the defense of renunciation of criminal purpose. The defendant claims that (he/she) terminated (his/her) complicity before (his/her) actions violated the law. The statute defining this defense reads in pertinent part as follows:

it shall be a defense that the defendant terminated (his/her) complicity prior to the commission of the offense under circumstances: (1) wholly depriving it of effectiveness in the commission of the offense, and (2) manifesting a complete and voluntary renunciation of (his/her) criminal purpose.

Renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.<sup>1</sup>

It is necessary that the defendant both repudiate (his/her) prior aid and deprive that aid of effectiveness. A mere change of heart or flight from the crime scene does not establish the defense of renunciation.

The defendant has no burden of proof whatsoever with respect to this defense. The state has the burden of disproving this defense beyond a reasonable doubt. In other words, the defendant is entitled to an acquittal if the state fails to disprove beyond a reasonable doubt: 1) the defendant voluntarily and completely renounced (his/her) criminal purpose; or that 2) the defendant, through (his/her) voluntary and complete renunciation, deprived the aid of its effectiveness in the commission of the crime.

---

<sup>1</sup> General Statutes § 53a-10 (b).

### *Commentary*

A defendant is entitled as a matter of law to an instruction on renunciation of criminal purpose instruction when there is any evidence to support the claim. *State v. Rosado*, 178 Conn. 704, 708 (1979); *State v. Livingston*, 22 Conn. App. 216, 223, cert. denied, 216 Conn. 812 (1990). See *State v. Adams*, 225 Conn. 270, 281-87 (1993) (instruction not warranted because defendant had provided the gun used in the crime, and had not attempted to recover it prior to the

crime); *State v. Richardson*, 40 Conn. App. 526, 530-32, cert. denied, 237 Conn. 905, cert. denied, 519 U.S. 902, 117 S. Ct. 257, 136 L. Ed. 2d 183 (1996) (instruction warranted when evidence showed that driver of the getaway car had left the scene).

## 3.1-3 Vicarious Liability under *Pinkerton*

Revised to December 1, 2007 (modified May 20, 2011)

**Note:** In the following instruction, two offenses are referred to: the "conspiracy offense" and the "substantive offense." As an example, assume that during the course of a robbery an innocent bystander is shot and killed by one of three coparticipants in the commission of the robbery. The defendant, who did not commit the murder, is charged with robbery, conspiracy to commit robbery, and murder under *Pinkerton*. The "conspiracy offense" would be robbery, and the "substantive offense" would be murder.

**This statute does not define a separate crime, but a separate theory of liability. It should be included in the instruction defining the substantive offense, following the elements of that offense. If the state presents alternative theories of vicarious liability, the jury must be unanimous. See Introduction to Vicarious Liability.**

The defendant is charged in count \_\_ with *<insert substantive offense>*, even though the state is not alleging that the defendant directly participated in the commission of the *<insert substantive offense>*. The defendant is also charged, in count \_\_, with conspiracy to commit *<insert conspiracy offense>*. There is a doctrine in our law, commonly referred to as the *Pinkerton* doctrine, that provides that once a defendant's participation in a conspiracy is established beyond a reasonable doubt, (he/she) may be held criminally liable for all of the criminal acts of the other coconspirators that are within the scope of and in furtherance of the conspiracy.

For you to find the defendant guilty of *<insert substantive offense>* under the principle of vicarious liability, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Conspiracy**

The first element is that the defendant conspired to commit [one of] the following crime[s]: *<insert conspiracy offense(s)>*. Proof of this element will depend on your deliberations pertaining to count *<insert the number of the count(s) charging the defendant with conspiracy>*. The defendant cannot be found guilty of *<insert substantive offense>* unless you find (him/her) also guilty of conspiracy to commit *<insert conspiracy offense(s)>*.

### **Element 2 - Crime committed by a coconspirator**

The second element is that a member of the conspiracy, in this case *<insert named of alleged coconspirator>*, committed *<insert substantive offense>*. [*<Include if appropriate:> <insert named of alleged coconspirator>* is not on trial today, and you do not need to render a verdict as to (his/her) guilt or innocence. However, the state has presented evidence, which must convince you beyond a reasonable doubt, that *<insert named of alleged coconspirator>* and the defendant were members of the conspiracy and that *<insert named of alleged coconspirator>* committed the *<insert substantive offense>*, the elements of which I have already explained to you.]

### **Element 3 - Within scope of and in furtherance of conspiracy**

The third element is that *<insert named of alleged coconspirator>*, when (he/she) committed the *<insert substantive offense>*, was acting within the scope of and in furtherance of the conspiracy. The phrase "in furtherance of" imposes the requirement of a relationship between the underlying

common design of the conspiracy to commit *<insert conspiracy offense(s)>* and the *<insert substantive offense>*. It means that the *<insert substantive offense>* was committed for the purpose of carrying out or achieving the object of the conspiracy.

#### **Element 4 – Reasonably foreseeable**

The fourth element is that it was reasonably foreseeable that *<insert substantive offense>* would be committed. You must find, depending on all the circumstances you find proved by credible evidence, that the crime of *<insert substantive offense>* was reasonably foreseeable as a necessary or natural consequence of the conspiracy.

#### **Conclusion**

In summary, you may find the defendant guilty of *<insert substantive offense>* on the basis of *Pinkerton* liability if you unanimously agree that the state has proved beyond a reasonable doubt that 1) the defendant conspired to commit [one of] the following crime[s]: *<insert conspiracy offense(s)>*, 2) a member of that conspiracy committed *<insert substantive offense>*, 3) the commission of *<insert substantive offense>* was within the scope of and in furtherance of the conspiracy, and 4) the commission of *<insert substantive offense>* was reasonably foreseeable as a necessary or natural consequence of the conspiracy.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of *<insert substantive offense>*, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

[*<If also submitted under a theory of accessorial liability:>* As I have already instructed you, the state is also claiming that the defendant is guilty of *<insert substantive offense>* as an accessory. Your possible verdicts as regards this count would be not guilty, guilty as an accessory, guilty as a coconspirator, or guilty as both an accessory and a coconspirator. You must all unanimously agree which of these verdicts will be returned.<sup>1</sup>]

---

<sup>1</sup> See *State v. Martinez*, 278 Conn. 598, 619-20 (2006).

#### ***Commentary***

In *Pinkerton v. United States*, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed.2d 1489 (1946), the U.S. Supreme Court held that when parties are found to have entered into a conspiracy, each of them may be convicted of substantive crimes committed by any of them as long as the offenses were in furtherance of the conspiracy. This principle of vicarious liability was adopted by the Connecticut Supreme Court in *State v. Walton*, 227 Conn. 32 (1993). Under *Pinkerton*, "a conspirator may be held liable for criminal offenses committed by a coconspirator that are within the scope of the conspiracy, are in furtherance of it, and are reasonably foreseeable as a necessary or natural consequence of the conspiracy." (Internal quotation marks omitted.) *State v. Coltherst*, 263 Conn. 478, 491 (2003). There is no requirement that the defendant have the same intent as the coconspirator who actually committed the crime. *Id.*, 493-98.

The court should not allow the jury to consider the *Pinkerton* theory of liability when "the nexus between the defendant's role in the conspiracy and the alleged conduct of a coconspirator is so attenuated or remote, notwithstanding the fact that the latter's actions were a natural consequence of the unlawful agreement, that it would be unjust to hold the defendant responsible for the criminal conduct of his coconspirator." *State v. Diaz*, 237 Conn. 518, 530 (1996).

A *Pinkerton* instruction is improper in a case in which the defendant was charged only with conspiracy and not with the substantive offense committed in furtherance of the conspiracy. *State v. Liebowitz*, 65 Conn. App. 788, 807-11, cert. denied, 259 Conn. 901 (2001).

***Pinkerton and attempt***

A person may be charged with attempted crimes under *Pinkerton*. *State v. Diaz*, supra, 237 Conn. 533.

***Pinkerton and felony murder***

Felony murder allows a conviction for murder when a death is caused by the defendant or another during the commission of a number of specified felonies, even though no one intended the death. Under *Pinkerton*, a defendant may be convicted of murder only if a coconspirator had the intent to cause the victim's death. *State v. Diaz*, supra, 237 Conn. 531.

***Pinkerton and capital felony***

A murder conviction pursuant to *Pinkerton* liability may be the predicate for a capital felony conviction. *State v. Coltherst*, supra, 263 Conn. 500-502; see also *State v. Peeler*, 271 Conn. 338, 364-65 (2004).

## 3.1-4 Vicarious Liability for Providing a Firearm -- § 53a-8 (b)

New, June 13, 2008 (modified May 20, 2011)

**Note:** This statute does not define a separate crime, but a separate theory of liability. It should be included in the instruction defining the substantive offense, following the elements of that offense. If the state presents alternative theories of vicarious liability, the jury must be unanimous. See Introduction to Vicarious Liability.

**When the defendant is charged only as an accessory, the court, in explaining the elements of the underlying crime, should refer to the fact that the underlying crime was committed by the principal offender rather than the defendant.**

[In the alternative,] (The/the) state charges the defendant with criminal liability for the acts of another pursuant to the statute that allows a person to be held liable if (he/she) provided another person with a firearm with which to commit the crime. ["In the alternative" means that you will not consider this claim if you have already found the defendant guilty of *<insert crime>* as either principal or accessory as I have just instructed you. If you have not unanimously found the defendant guilty of *<insert crime>* as either principal or accessory, then you are to go on and consider this alternative theory of liability.]

The statute allowing this kind of liability reads as follows:

a person who sells, delivers or provides any firearm to another person to engage in conduct which constitutes an offense knowing or under circumstances in which he should know that such other person intends to use such firearm in such conduct shall be criminally liable for such conduct and shall be prosecuted and punished as if he were the principal offender.

[This statute provides an alternative theory of vicarious criminal responsibility not dependent on a shared criminal intent as required between principal and accessory.] There is no requirement under this section that the defendant have the specific criminal intent necessary to commit the crime of *<insert crime>*. It is only necessary that *<insert name of other person>* had such intent at the time of the alleged transfer. As I instructed you earlier, the intent necessary for the crime of *<insert crime>* is *<describe intent>*.

For you to find the defendant guilty of *<insert crime charged>* under this provision, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sold, delivered, or provided a firearm to another person**

The first element is that the defendant sold, delivered or provided a firearm to *<insert name of other person>*. The terms "sell," "deliver," and "provide" have their ordinary meaning. Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>1</sup> You must find that the firearm was operable at the time of the offense.

### **Element 2 - Intent of other person**

The second element is that at the time the defendant provided <insert name of other person> with a firearm, <insert name of other person> had the intent to commit <insert crime>.

### **Element 3 - Knowledge**

The third element is that the defendant knew or should have known that <insert name of other person> intended to commit the crime of <insert crime>. A person acts "knowingly" with respect to conduct or to a circumstance described by a statute defining an offense when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See Knowledge, Instruction 2.3-3.>

Ordinarily, knowledge can be established only through an inference from other proven facts and circumstances. The inference may be drawn if the circumstances are such that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have realized that <insert name of other person> intended to use the firearm provided by the defendant in committing <insert crime>.

### **Element 4 - Crime was committed**

The fourth element is that <insert name of other person> actually committed the crime of <insert crime>. <Insert name of other person> is not on trial today, and you do not need to render a verdict as to (his/her) guilt or innocence. However, the state has presented evidence, which must convince you beyond a reasonable doubt, that <insert name of other person> committed <insert crime>, the elements of which I have already explained to you.

### **Conclusion**

For you to find the defendant guilty of <insert crime> under this theory of criminal liability, you must unanimously find that the state has proved beyond a reasonable doubt that the defendant (sold / delivered / provided) a firearm to <insert name of other person> knowing that <insert name of other person> would commit the crime of <insert substantive crime> and that <insert name of other person> did commit the crime using the firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of <insert substantive offense>, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See definitions for machine gun, rifle, shotgun, and pistol or revolver in the glossary.

### **Commentary**

The knowledge requirement of this instruction is very narrowly written to protect the constitutionality of the statute against a charge of vagueness. It has not yet been subject to appellate review.

## **3.2. ATTEMPT**

### **3.2 Introduction to Attempt**

**3.2-1 Attempt -- § 53a-49 (a) (1)**

**3.2-2 Attempt -- § 53a-49 (a) (2)**

**3.2-3 Renunciation of Criminal Purpose  
(Attempt) -- § 53a-49 (c)**

## 3.2 Introduction to Attempt

New November 17, 2015

General Statutes § 53a-49 defines two ways in which an attempt crime may be committed: the defendant engages in conduct which would constitute the crime if attendant circumstances were as he or she believes them to be, or the defendant takes a substantial step towards the commission of the crime. If the state does not indicate which of the subsections of § 53a-49 (a) it is relying on, the court may wish to clarify this before instructing the jury on attempt.

"Both § 53a-49 (1) and (2) require that the state prove both intent and conduct to sustain a conviction. . . . There are two essential elements of an attempt under this statute. They are, first, that the defendant had a specific intent to commit the crimes as charged, and, second, that he did some overt act adapted and intended to effectuate that intent. . . . [T]he attempt is complete and punishable, when an act is done with intent to commit the crime, which is adapted to the perpetration of it, whether the purpose fails by reason of interruption . . . or for other extrinsic cause." (Internal quotation marks omitted.) *State v. Perez*, 147 Conn. App. 53, 89-90 (2013).

"[A] substantial step must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime, and thus the finder of fact may give weight to that which has already been done as well as that which remains to be accomplished before commission of the substantive crime. . . . In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime, and be of such a nature that a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute." *State v. Sorabella*, 277 Conn. 155, 180-81 (2006).

In *State v. Moreno-Hernandez*, 317 Conn. 292 (2015), the Supreme Court acknowledged that its prior decisions, and those of the Appellate Court, were contradictory as to whether the attendant circumstances subdivision is limited to impossibility situations. *Id.*, 300. It then undertook a thorough review of the language of the statute and the commentary of the Model Penal Code sections upon which it was based and concluded that it is not limited to impossibility situations. *Id.*, 306. It also concluded that "the distinction between the two subdivisions is the degree of completeness each requires in the course of an actor's conduct." *Id.*, 311. "The substantial step subdivision criminalizes certain conduct that would fall short of violating the attendant circumstances subdivision. That is, the substantial step subdivision covers situations in which an individual has not engaged in conduct that would constitute the crime if attendant circumstances were as he believed them to be, but, rather, only has taken a substantial step toward committing the crimes that is strongly corroborative of his criminal intent." *Id.*, 311.

## 3.2-1 Attempt -- § 53a-49 (a) (1)

Revised to November 17, 2015)

The defendant is charged [in count \_\_\_\_] with attempt to commit *<insert substantive offense>*.

The statute defining attempt reads in pertinent part as follows:

a person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for the commission of the crime, (he/she) intentionally engages in conduct which would constitute the crime if attendant circumstances were as (he/she) believes them to be.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Intent**

The first element is that the defendant had the kind of mental state required for commission of the crime of *<insert substantive offense>*. The intent for that crime is the intent to *<insert intent required for substantive offense>*.

### **Element 2 - Conduct**

The second element is that the defendant intentionally engaged in conduct that would constitute the crime of *<insert substantive offense>* if attendant circumstances were as (he/she) believed them to be. "Attendant circumstances" is generally understood to mean the facts surrounding an event.

### **Conclusion**

If, upon all the evidence, you conclude beyond a reasonable doubt that the defendant had formed in (his/her) mind the intention to commit *<insert substantive crime>* as it has been defined for you, you must next consider whether (he/she) intentionally did anything that would constitute the crime if the circumstances were as (he/she) believed them to be. In other words, the state must prove both intent and conduct beyond a reasonable doubt to obtain a conviction.

If you unanimously find that the state has proved beyond a reasonable doubt that the defendant intended to commit *<insert substantive crime>* and engaged in conduct that would constitute that crime if circumstances were as (he/she) believed them to be, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt either of these elements, you shall then find the defendant not guilty.

## 3.2-2 Attempt -- § 53a-49 (a) (2)

Revised to December 1, 2007 (modified November 17, 2015)

The defendant is charged [in count \_\_\_] with attempt to commit *<insert substantive offense>*.

The statute defining attempt reads in pertinent part as follows:

a person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime, (he/she) intentionally does or omits to do anything which, under the circumstances as (he/she) believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in (his/her) commission of the crime.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant had the kind of mental state required for commission of the crime of *<insert substantive offense>*. The intent for that crime is the intent to *<insert intent required for substantive offense>*.

### Element 2 - Conduct

The second element is that the defendant intentionally did anything that, under the circumstances as (he/she) believed them to be, was an act constituting a substantial step in a course of conduct planned to culminate in (his/her) commission of the crime of *<insert substantive offense>*. To be a substantial step, the conduct must be strongly corroborative of the defendant's criminal purpose.<sup>1</sup> The act or acts must constitute more than mere preparation. The defendant's conduct must be at least the start of a line of conduct that will lead naturally to the commission of a crime. In other words, it must appear to the defendant that it was at least possible that the crime could be committed if (he/she) continued on (his/her) course of conduct.

### Conclusion

If, upon all the evidence, you conclude beyond a reasonable doubt that the defendant had formed in (his/her) mind the intention to commit *<insert substantive crime>* as it has been defined for you, you must next consider whether (he/she) intentionally did anything that would constitute a substantial step towards the commission of the crime. In other words, the state must prove both intent and conduct beyond a reasonable doubt to obtain a conviction.

If you unanimously find that the state has proved beyond a reasonable doubt that the defendant intended to commit *<insert substantive crime>* and took a substantial step toward the commission of that crime, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt either of these elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-49 (b) (providing examples of substantial steps).

### *Commentary*

The court may, if it so chooses, and if supported by the evidence, provide an example of what is a "substantial step." General Statutes § 53a-49 (b) provides the following examples that, if strongly corroborative of the actor's criminal purpose, "shall not be held insufficient as a matter of law: (1) Lying in wait, searching for or following the contemplated victim of the crime; (2) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission; (3) reconnoitering the place contemplated for the commission of the crime; (4) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed; (5) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances; (6) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances; (7) soliciting an innocent agent to engage in conduct constituting an element of the crime." As for "following" in subsection (b) (1), the Appellate Court, in *State v. Damato*, 105 Conn. App. 335, 343 n.7, cert. denied, 286 Conn. 920 (2008), rejected the defendant's argument that "following" as used in this statute must be given the interpretation applied to "following" in the stalking statutes.

## 3.2-3 Renunciation of Criminal Purpose (Attempt) -- § 53a-49 (c)

Revised to December 1, 2007

There has been some evidence presented with regard to the defense of renunciation of criminal purpose. The defendant claims that (he/she) abandoned (his/her) effort to commit the crime before (his/her) actions violated the law. The statute defining this defense reads in pertinent part as follows:

when the actor's conduct would otherwise constitute an attempt it shall be a defense that (he/she) abandoned (his/her) effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of (his/her) criminal purpose.

Renunciation is not voluntary if it is motivated, in whole or in part, by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct or to transfer the criminal effort to another but similar objective or victim.<sup>1</sup>

The defendant has no burden of proof whatsoever with respect to this defense. The state has the burden of disproving this defense beyond a reasonable doubt. In other words, the defendant is entitled to an acquittal if the state fails to disprove beyond a reasonable doubt that: 1) the defendant's renunciation of (his/her) criminal purpose was complete and voluntary; OR 2) that the defendant took affirmative steps and acts that served to prevent the commission of the crime attempted.

---

<sup>1</sup> General Statutes § 53a-50.

### *Commentary*

In *State v. Kelly*, 23 Conn. App. 160 (1990), cert. denied, 216 Conn. 831, cert. denied, 499 U.S. 981, 111 S. Ct. 1635, 113 L. Ed. 2d 731 (1991), the Appellate Court discussed the trial court's use of the phrase "too late to renounce" in its instruction on this defense. "While the words, 'too late to renounce,' suggest that there is temporally a point beyond which one cannot renounce an attempt to commit a crime, the same words are also susceptible to another interpretation. These words could also mean that it is too late to renounce effectively an attempt to commit a crime if such a renouncement is induced by circumstances outside of the control of the actor that were not present at the inception of the actor's conduct, which increase the probability of detection or apprehension. If the words mean the latter, then they are perfectly consistent with the law." *Id.*, 166 n.4.

## **3.3. CONSPIRACY**

**3.3-1 Conspiracy -- § 53a-48 (a)**

**3.3-2 Renunciation of Criminal Purpose  
(Conspiracy) -- § 53a-48 (b)**

## 3.3-1 Conspiracy -- § 53a-48 (a)

Revised to March 4, 2015

The defendant is charged [in count \_\_\_\_] with conspiracy to commit *<insert object of conspiracy>*. I have already defined for you the crime and all the elements of *<insert object of conspiracy>*. The statute defining conspiracy reads in pertinent part as follows:

a person is guilty of conspiracy when, with the intent that conduct constituting a crime be performed, (he/she) agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in pursuance of such conspiracy.

To constitute the crime of conspiracy, the state must prove the following elements beyond a reasonable doubt: 1) there was an agreement between the defendant and one or more persons to engage in conduct constituting the crime of *<insert object of conspiracy>*, which conspiracy the defendant specifically intended to join; 2) there was an overt act in furtherance of the subject of the agreement by any one of those persons; and 3) the defendant specifically intended to commit the crime of *<insert object of conspiracy>*.<sup>1</sup>

The size of the defendant's role does not determine whether (he/she) may be convicted of conspiracy. Rather, what is important is whether the defendant wilfully participated in the activities of the conspiracy with knowledge of its illegal ends. Participation in a single act in furtherance of the conspiracy is enough to sustain a finding of knowing participation.<sup>2</sup>

### **Element 1 - Agreement**

The first element is that there was an agreement between two or more persons. It is not necessary for the state to prove that there was a formal or express agreement between them.<sup>3</sup> It is sufficient to show that the parties intentionally engaged in a mutual plan to do a criminal act.<sup>4</sup> Circumstantial evidence is sufficient to prove that there was an agreement because conspiracies, by their very nature, are formed in secret and only rarely can be proved by other than circumstantial evidence.<sup>5</sup> It is not necessary to establish that the defendant and the defendant's alleged coconspirators signed papers, shook hands, or uttered the words "we have an agreement" but rather a conspiracy can be inferred from the conduct of the accused.<sup>6</sup>

The mere knowledge, acquiescence or approval of the object of the agreement without cooperation or agreement to cooperate, however, is not sufficient to make one a party to a conspiracy to commit the criminal act. Mere presence at the scene of the crime, even when coupled with knowledge of the crime, is insufficient to establish guilt of the conspiracy to commit the crime.<sup>7</sup>

In order to convict a person of conspiracy, the state need not show that such person had direct communication with all other conspirators. It is not necessary that each conspirator be acquainted with all others or even know their names. It is sufficient if (he/she) has come to an understanding with at least one of the others, and has come to such understanding with that person to further a criminal purpose. Additionally, it is not essential that (he/she) know the

complete plan of the conspiracy in all of its details. It is enough if (he/she) knows that a conspiracy exists or that (he/she) is creating one and that (he/she) is joining with at least one person in an agreement to commit a crime. Therefore, in order to convict the defendant on the charge contained in the information, the first element that the state must prove beyond a reasonable doubt is that the defendant specifically intended to enter into an agreement, with at least one other person to engage in conduct constituting *<insert object of conspiracy>*.

### **Element 2 - Overt act**

The second element is that at least one of the alleged coconspirators did an overt act to further the purpose of the conspiracy. It does not matter which one of the alleged coconspirators did the overt act. It need not be the defendant, and it need not be a criminal act. An overt act is any step, action, or conduct that is taken to achieve or further the objective of the conspiracy. An overt act, therefore, is one that is committed or caused to be committed by any member of the conspiracy in an effort to accomplish some objective or purpose of the conspiracy. Remember, a single overt act is sufficient to prove this element of the conspiracy. The overt act cannot, however, be held against the other alleged coconspirators if it was not intended to further the general purposes of the conspiracy, but was secretly intended to further the actor's own personal purpose. The overt act must be a subsequent independent act that follows the formation of the conspiracy.<sup>8</sup>

### **Element 3 - Criminal intent**

The third element is that the defendant had the intent to commit *<insert object of conspiracy>*. This means that the defendant must specifically intend that every element of the planned offense be accomplished. As to this count, those elements are *<describe the intent of the offense including elements that carry no specific intent requirement.>* The defendant may not be found guilty unless the state has proved beyond a reasonable doubt that (he/she) specifically intended to commit *<insert object of conspiracy>* when (he/she) entered into the agreement.<sup>9</sup> *<See Intent: Specific, Instruction 2.3-1.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant had an agreement with one or more other persons to commit *<insert object of conspiracy>*, 2) at least one of the coconspirators did an overt act in furtherance of the conspiracy, and 3) the defendant specifically intended to enter into the agreement and intended the conduct constituting the crime of *<insert the object of the conspiracy>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of conspiracy to commit *<insert object of conspiracy>*, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Henry*, 253 Conn. 354, 366-68 (2000); *State v. Hooks*, 30 Conn. App. 232, 241-42, cert. denied, 225 Conn. 915 (1993); *State v. Hernandez*, 28 Conn. App. 126, 134-35, cert. denied, 223 Conn. 920 (1992); *State v. Dematteo*, 186 Conn. 696, 707 (1982); *State v. Ortiz*, 169 Conn. 642, 645 (1975).

<sup>2</sup> *State v. Forde*, 52 Conn. App. 159, 168, cert. denied, 248 Conn. 918 (1999); *State v. Boykin*, 27 Conn. App. 558, 565, cert. denied, 223 Conn. 905 (1992).

<sup>3</sup> *State v. Bond*, 49 Conn. App. 183, 195-96, cert. denied, 247 Conn. 915 (1998); *State v. Hernandez*, supra, 28 Conn. App. 135; *State v. Channer*, 28 Conn. App. 161, 168-69, cert. denied, 223 Conn. 921 (1992).

<sup>4</sup> *State v. Lewis*, 220 Conn. 602, 607 (1991); *State v. Johns*, 184 Conn. 369, 378 (1981).

<sup>5</sup> *State v. Forde*, 52 Conn. App. 159, 168 (1999); *State v. Channer*, supra, 28 Conn. App. 168.

<sup>6</sup> *State v. Bond*, supra, 49 Conn. App. 195-96; *State v. Boykin*, supra, 27 Conn. App. 564-65.

<sup>7</sup> *State v. Goodrum*, 39 Conn. App. 526, 540 (1995); *State v. Lynch*, 21 Conn. App. 386, 392, cert. denied, 216 Conn. 806 (1990).

<sup>8</sup> *State v. Smart*, 37 Conn. App. 360, 376-79, cert. denied, 233 Conn. 914 (1995); *State v. Boykin*, supra, 27 Conn. App. 569-72.

<sup>9</sup> It is not necessary to include in the instruction any reference to the intent of any of the coconspirators. *State v. Sanchez*, 84 Conn. App. 583, 592-93, cert. denied, 271 Conn. 929 (2004) (approving an instruction on intent similar to the model one).

#### ***Commentary***

"Conspiracy has long been recognized as an offense separate and distinct from the commission of the substantive offense." *State v. Davis*, 68 Conn. App. 794, 801-802, cert. denied, 260 Conn. 920 (2002). An exception to this general rule is that "[a]n agreement by two persons to commit a particular crime cannot be prosecuted as a conspiracy when the crime is of such a nature as to necessarily require the participation of two persons for its commission." (Internal quotation marks omitted.) *State v. Acklin*, 171 Conn. 105, 117 (1976) (discussing *Wharton's* rule).

Completion of the object of the conspiracy is not necessary for the prosecution of the conspiracy. "The gravamen of the crime of conspiracy is the unlawful combination and an act done in pursuance thereof, not the accomplishment of the objective of the conspiracy." *State v. Stevens*, 178 Conn. 649, 655-56 (1979) (defendant not guilty of larceny, guilty of conspiracy to commit larceny).

"A defendant cannot be guilty of conspiracy if the only other member of the alleged conspiracy lacks any criminal intent." *State v. Cavanaugh*, 23 Conn. App. 667, 671, cert. denied, 220 Conn. 930 (1991) (because one of the two coconspirators was an undercover agent without the intent to commit a crime, a conspiracy could not exist).

#### ***Mental state required***

"Conspiracy is a specific intent crime, with the intent divided into two elements: (a) the intent to agree or conspire and (b) the intent to commit the offense which is the object of the conspiracy. . . . To sustain a conviction for conspiracy to commit a particular offense, the prosecution must show not only that the conspirators intended to agree but also that they intended to commit the elements of the offense." (Internal quotation marks omitted.) *State v. Beccia*, 199 Conn. 1, 3-4 (1986); see also *State v. Mourning*, 104 Conn. App. 262, 286-88 (2007), cert. denied, 285 Conn. 903 (curative instruction sufficiently connected the conspiracy

instruction to the instruction on the intent to commit murder); *State v. Moore*, 100 Conn. App. 122, 136-38 (2007) (failure to instruct on the intent of the crime that was the object of the conspiracy was reversible error); *State v. DeJesus*, 92 Conn. App. 92, 97 (2005), appeal dismissed, 282 Conn. 783 (2007) (in a case concerning two victims, trial court's conspiracy instruction improperly failed to connect conspiracy to commit to murder to the specific victim). "[T]here is no such thing as a conspiracy to commit a crime which is defined in terms of recklessly or negligently causing a result." *Id.*, 5 (conspiracy to commit arson in the third degree is not a cognizable crime). See also *State v. Montgomery*, 22 Conn. App. 340, 344-45, cert. denied, 216 Conn. 813 (1989) (conspiracy to commit manslaughter not cognizable; one cannot intend to commit an unintentional killing).

In *State v. Pond*, 315 Conn. 451 (2015), the Supreme Court clarified its interpretation of the mens rea language of § 53a-48 (a), contrasting it to that of § 53a-8 (a) (accessory) and § 53a-49 (a) (attempt), concluding that "the legislature did not intend that the mens rea requirement for conspiracy would mirror that of the object offense." *Id.*, 472. This is so because although evidence of the object of the conspiracy (the crime) often provides some or all of the evidence for the criminal agreement, the crime of conspiracy is itself a completed crime, not truly inchoate. Unlike accessorial liability and attempt, no completed crime or completed attempt need be proven.

#### ***If coconspirators not charged or convicted***

General Statutes § 53a-48 is a unilateral, rather than a bilateral, conspiracy statute, meaning that a conspirator may be prosecuted for conspiracy despite the non-prosecution or acquittal of the alleged sole coconspirator in a separate trial for conspiracy charges arising out of the same alleged conspiracy. *State v. Colon*, 257 Conn. 587, 600-601 (2001). However, if tried in a joint trial, conviction of one coconspirator and acquittal of another is an inconsistent verdict and cannot stand, unless there is evidence that more than two people may have been involved in the conspiracy. *State v. Abraham*, 64 Conn. App. 384, 389-95, cert. denied, 258 Conn. 917 (2001).

#### ***Multiple conspiracies***

"Whether the object of a single agreement is to commit one or many crimes, it is in either case that agreement which constitutes the conspiracy which the statute punishes. The one agreement cannot be taken to be several agreements and hence several conspiracies because it envisages the violation of several statutes rather than one. . . . The single agreement is the prohibited conspiracy, and however diverse its objects it violates but a single statute. . . . For such a violation, only the single penalty prescribed by the statute can be imposed." *State v. Howard*, 221 Conn. 447, 462 (1992). See also *State v. Toth*, 29 Conn. App. 843, 858, cert. denied, 225 Conn. 908 (1993) ("Where the evidence establishes only one agreement, there can be only one conspiracy conviction, even though the conspirators planned, as part of the agreement, to engage in conduct violative of more than one criminal statute."); but see *State v. Peeler*, 267 Conn. 611, 633 (2004) (finding two separate agreements to commit two different crimes); *State v. Ellison*, 79 Conn. App. 591, 597-600, cert. denied, 267 Conn. 901 (2003) (same).

If multiple conspiracies are charged in separate counts, and the defendant is found guilty of more than one of those counts, the court should merge the conspiracy convictions and impose a single sentence. *State v. Howard*, *supra*, 221 Conn. 463.

If multiple conspiracies are charged in a single count, the court must instruct the jury that it must be unanimous as to which of the crimes was the object of the conspiracy. *State v. Toth*, supra, 29 Conn. App. 860. "The jury must . . . specifically determine the crime or crimes that were the object offenses of the conspiracy, so that the trial court may properly base the defendant's sentence on the most serious of these object offenses." *Id.*

***If also charged with the substantive crime***

A defendant may be convicted of conspiracy to commit a crime and the commission of that crime as a principal or accessory. *State v. Green*, 81 Conn App. 152, 158, cert. denied, 268 Conn. 909 (2004) (defendant convicted of sale of narcotics as an accessory and conspiracy to sell narcotics); *State v. Soto*, 59 Conn. App. 500, 503-505, cert. denied, 254 Conn. 950 (2000) (not inconsistent for defendant to be convicted of murder as accessory and acquitted of conspiracy).

***Defense***

See Renunciation of Criminal Purpose (Conspiracy), Instruction 3.3-2.

In *State v. Montanez*, 277 Conn. 735, 751-63 (2006), the Court held that because the commission of a crime is an essential predicate fact of accessorial liability, if the principal is acquitted on the grounds of justification, the crime has not legally been committed. Hence, if a justification defense is available to the principal, the accessory can also assert it. This principal would likely extend to coconspirators.

## 3.3-2 Renunciation of Criminal Purpose (Conspiracy) -- § 53a-48 (b)

Revised to December 1, 2007

There has been some evidence presented with regard to the defense of renunciation of criminal purpose. The defendant claims that although (he/she) admittedly participated in the original conspiratorial agreement, (he/she) nonetheless renounced or withdrew from it, and therefore should be acquitted. The statute defining this defense reads in pertinent part as follows:

it shall be a defense to a charge of conspiracy that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of (his/her) criminal purpose.

If the renunciation or withdrawal takes place before an overt act has been committed, the renouncing conspirator has not actually become a culpable part of a criminal conspiracy. On the other hand, if one or more overt acts has already occurred, (he/she) has already committed the crime of conspiracy and cannot be heard to say that (he/she) no longer wished to be considered part of it. Once (he/she) is shown to have participated in the initial agreement or common purpose, the defendant is presumed to continue in such capacity until (he/she) clearly and unequivocally disassociates (himself/herself) from it.

The defendant has no burden of proof whatsoever with respect to this defense. The state has the burden of disproving this defense beyond a reasonable doubt. In other words, the defendant is entitled to an acquittal if the state fails to disprove beyond a reasonable doubt: 1) the defendant voluntarily and completely renounced (his/her) criminal purpose; and 2) in such voluntary and complete renunciation, (he/she) thwarted the success of the conspiracy; that is, (he/she) actually prevented the commission of the crime that was the object of the conspiracy.

### *Commentary*

For the defense of renunciation to be available, it is important that the crime contemplated by the alleged conspiracy was not committed. This is a change from the common-law doctrine of withdrawal that required only communication of the withdrawal to the coconspirators. *State v. Klein*, 97 Conn. 321 (1922).

A conspirator may defend on the ground of renunciation and abandonment when a crime is committed after the withdrawal if the crime actually committed was not the crime toward which the conspiracy was directed. *People v. Agron*, 10 N.Y.2d 130, 218 N.Y.S.2d 625 (1961), cert. denied, 368 U.S. 922, 82 S. Ct. 245, 7 L. Ed.2d 136 (1961).

See generally *State v. Richardson*, 40 Conn. App. 526, 532-33, cert. denied, 237 Conn. 905 (1996), cert. denied, 519 U.S. 902, 117 S. Ct. 257, 136 L. Ed. 2d 183 (1996) (discussing "thwarting the success of the conspiracy").

# **PART 4: CRIMES AGAINST ADMINISTRATION OF GOVERNMENT**

**4.1 PUBLIC CORRUPTION**

**4.2 FALSE STATEMENT**

**4.3 INTERFERENCE WITH AN OFFICIAL**

**4.4 FAILURE TO APPEAR**

**4.5 INTERFERENCE WITH COURT  
PROCEEDINGS**

**4.6 CRIMES INVOLVING CORRECTIONAL  
INSTITUTES AND PRISONERS**

**4.7 VIOLATING CONDITIONS OF RELEASE**

## **4.1 PUBLIC CORRUPTION**

- 4.1-1 Bribery -- § 53a-147**
- 4.1-2 Bribe Receiving -- § 53a-148**
- 4.1-3 Bribery of a Labor Official -- § 53a-158**
- 4.1-4 Bribe Receiving by a Labor Official -- § 53a-159**
- 4.1-5 Commercial Bribery -- § 53a-160**
- 4.1-6 Receiving a Commercial Bribe -- § 53a-161**
- 4.1-7 Bid Rigging -- § 53a-161a**
- 4.1-8 Disclosure of Bid or Proposal -- § 53a-161b**
- 4.1-9 Receiving Kickbacks -- § 53a-161c (a) (1)**
- 4.1-10 Receiving Kickbacks -- § 53a-161c (a) (2)**
- 4.1-11 Receiving Kickbacks -- § 53a-161c (a) (3)**
- 4.1-12 Paying a Kickback -- § 53a-161d (a) (1)**
- 4.1-13 Paying a Kickback -- § 53a-161d (a) (2)**
- 4.1-14 Vendor Fraud -- § 53a-290, § 53a-291, § 53a-292, § 53a-293, § 53a-294, § 53a-295, and § 53a-296**

## 4.1-1 Bribery -- § 53a-147

Revised to December 1, 2007 (modified August 1, 2008)

The defendant is charged [in count \_\_\_\_] with bribery. The statute defining this offense reads in pertinent part as follows:

a person is guilty of bribery if (he/she) (promises / offers / confers / agrees to confer) upon a (public servant / a person selected to be a public servant), any benefit as consideration for the recipient's (decision / opinion / recommendation / vote) as a (public servant / a person selected to be a public servant).

The essence of the crime of bribery is the voluntary giving of something of monetary value to a (public servant / a person selected to be a public servant) to influence the performance of official duty.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Benefit**

The first element is that the defendant (promised / offered / conferred / agreed to confer) a benefit. "Benefit" means a monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including benefit to any person or entity in whose welfare the beneficiary is interested.

### **Element 2 - To public servant**

The second element is that at the time that the benefit was (promised / offered / conferred / agreed to be conferred), the person who was to receive that benefit was a (public servant / selected to be a public servant). <Insert the applicable definitions:>

- A "public servant" is an officer or employee of government or a quasi-public agency, elected or appointed, and any person participating as adviser, consultant or otherwise, paid or unpaid, in performing a governmental function.
- A "person selected to be a public servant" means any person who has been nominated or appointed to be a public servant.

### **Element 3 - For consideration**

The third element is that the benefit was consideration for the recipient's (decision / opinion / recommendation / vote) as a (public servant / person selected to be a public servant). In this case the state alleges that the benefit was <identify the benefit>.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (promised / offered / conferred / agreed to confer) a benefit, 2) to a public servant, and 3) in consideration for the recipient's (decision / opinion / recommendation / vote) as a (public servant / person selected to be a public servant).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of bribery, then you shall find the defendant guilty. On the other hand, if you

unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary***

Section 53a-147 does not require proof of a specific intent to influence official behavior. *State v. Carr*, 172 Conn. 458, 466 (1977).

It is no defense that the public servant sought to be influenced could not have acted in the manner desired because the result sought was outside the scope of the public servant's authority. Nor is it necessary to show that the alleged bribe had the desired result. *Id.*, 468.

***Lesser included offenses***

Offering a gift to a police officer, General Statutes § 29-9, is not a lesser included offense of § 53a-147, because it requires proof of specific intent, which the offense of bribery does not. *State v. Carr*, *supra*, 172 Conn. 467.

## 4.1-2 Bribe Receiving -- § 53a-148

Revised to December 1, 2007 (modified August 1, 2008)

The defendant is charged [in count \_\_\_\_] with bribe receiving. The statute defining this offense reads in pertinent part as follows:

a (public servant / a person selected to be a public servant) is guilty of bribe receiving if (he/she) (solicits / accepts / agrees to accept) from another person any benefit (for / because of / as consideration for) (his/her) (decision / opinion / recommendation / vote).

This section prohibits the receipt of a benefit by a public servant, given to (him/her) or so solicited by (him/her) for the purpose of influencing (his/her) conduct. The essence of the crime of bribe receiving is that a (public servant / person selected to be a public servant) (solicits / accepts / agrees to accept) a benefit from another person. The bribe must relate to the exercise of the public servant's official powers or to the function of the (public servant / person selected to be a public servant), as opposed to (his/her) individual capacity.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Public servant**

The first element is that on the date of the offense the defendant was a (public servant / a person selected to be a public servant). *<Insert the applicable definitions:>*

- A "public servant" is an officer or employee of government or a quasi-public agency, elected or appointed, and any person participating as adviser, consultant or otherwise, either paid or unpaid, in performing a governmental function.
- A "person selected to be a public servant" means any person who has been nominated or appointed to be a public servant.

### **Element 2 - Benefit sought**

The second element is that the defendant (solicited / accepted / agreed to accept) a benefit from *<insert name of the person>*. "Benefit" means a monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including benefit to any person or entity in whose welfare the beneficiary is interested.

### **Element 3 - For consideration**

The third element is that the defendant (solicited / accepted / agreed to accept) from *<insert name of the person>* the benefit, as consideration for (his/her) (decision / opinion / recommendation / vote). In this case, the state alleges that the benefit was *<insert the benefit alleged>*.

"Decision" signifies any exercise of discretion by the public servant.<sup>1</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was a (public servant / a person selected to be a public servant) on the date of the offense, 2) the defendant

(solicited / accepted / agreed to accept) a benefit from <insert name of person>, and 3) the defendant did so as consideration for (his/her) (decision / opinion / recommendation / vote).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of bribe receiving, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See *State v. Rado*, 14 Conn. App. 322, 329-30, cert. denied, 208 Conn. 813, cert. denied, 488 U.S. 927, 109 S.Ct. 311, 102 L.Ed.2d 330 (1988).

#### ***Commentary***

"[T]he date the defendant receive[s] the money is not a material element. . . . Indeed, the defendant might be convicted under the statute without ever having received the money. It is sufficient for the state to prove that the defendant 'solicits' or 'agrees to accept' any benefit in consideration for his decision." (Citations omitted.) *State v. Bergin*, 214 Conn. 657, 668 (1990).

It is immaterial and no defense that the public servant had no authority to take the action solicited by the bribe. *State v. Carr*, 172 Conn. 458, 468 (1977).

## 4.1-3 Bribery of a Labor Official -- § 53a-158

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with bribery of a labor official. The statute defining this offense reads in pertinent part as follows:

a person is guilty of bribery of a labor official if (he/she) (offers / confers upon / agrees to confer upon) a labor official any benefit with intent to influence (him/her) in respect to any of (his/her) acts, decisions or duties as such labor official.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Benefit to a labor official**

The first element is that the defendant (offered / conferred upon / agreed to confer upon) a benefit upon a labor official. "Benefit" means monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including benefit to any person or entity in whose welfare the beneficiary is interested. A "labor official" means any duly appointed or elected representative of a labor organization or any duly appointed or elected trustee or representative of an employee welfare trust fund.

### **Element 2 - Intent to influence**

The second element is that in (offering / conferring upon / agreeing to confer upon) a benefit, the defendant specifically intended to influence the labor official in respect to any of (his/her) acts, decisions or duties as a labor official.

You must find that the state has proved beyond a reasonable doubt that the defendant acted with the specific intent to influence the labor official in respect to any of (his/her) acts, decisions or duties as such labor official. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (offered / conferred upon / agreed to confer upon) a benefit upon a labor official, and 2) the defendant did so with the intent to influence the labor official in respect to any of (his/her) acts, decisions or duties as a labor official.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of bribery of a labor official, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 4.1-4 Bribe Receiving by a Labor Official -- § 53a-159

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with bribe receiving by a labor official. The statute defining this offense reads in pertinent part as follows:

a labor official is guilty of bribe receiving by a labor official if (he/she) (solicits / accepts / agrees to accept) any benefit from another person upon an agreement or understanding that such benefit will influence (him/her) in respect to any of (his/her) acts, decisions or duties as such labor official.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Labor official**

The first element is that the defendant was a labor official within the meaning of that term, on the dates alleged. "Labor official" means any duly appointed or elected representative of a labor organization or any duly appointed or elected trustee or representative of an employee welfare trust fund.

### **Element 2 - Benefit sought**

The second element is that the defendant (solicited / accepted / agreed to accept) a benefit of <insert benefit> from <insert alleged provider of bribe>. "Benefit" means monetary advantage or anything regarded by the beneficiary as monetary advantage, including a benefit to any person or entity in whose welfare the beneficiary is interested.

### **Element 3 - Intent to influence**

The third element is that the defendant (solicited / accepted / agreed to accept) that benefit upon the understanding that such benefit would influence (him/her) in respect to any of (his/her) acts, decisions or duties as a labor official.

You must find that the state has proved beyond a reasonable doubt that the defendant (solicited / accepted / agreed to accept) the benefit with the specific intent that the receipt of the benefit would influence (his/her) acts, decisions or duties. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was a labor official on the dates alleged, 2) the defendant (solicited / accepted / agreed to accept) a benefit of <insert benefit> from <insert alleged provider of bribe>, and 3) the defendant (solicited / accepted / agreed to accept) that benefit upon the understanding that such benefit would influence (him/her) in respect to any of (his/her) acts, decisions or duties as a labor official.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of bribe receiving by a labor official, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 4.1-5 Commercial Bribery -- § 53a-160

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with commercial bribery. The statute defining this offense reads in pertinent part as follows:

a person is guilty of commercial bribery when (he/she) (confers / agrees to confer) any benefit upon any (employee / agent / fiduciary) without the consent of the latter's (employer / principal), with intent to influence (his/her) conduct in relation to (his/her) (employer's / principal's) affairs.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Benefit offered**

The first element is that the defendant conferred or agreed to confer a benefit upon an (employee / agent / fiduciary). "Benefit" means monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including a benefit to any person or entity in whose welfare the beneficiary is interested. It makes no difference that the beneficiary does not accept or receive the benefit. The crime is committed if the defendant merely makes the offer to confer such a benefit, or even if (he/she) merely agrees to confer such benefit.

The state must also prove that <insert name of target of bribe> was an (employee / agent / fiduciary) of a[n] (employer / principal). The law prohibits the corruption or subordination of (employees / agents / fiduciaries) in the performance of their duties for their (employers / principals). The first duty of such a person is to be faithful and loyal to the interests of (his/her) (employer / principal). If you find, therefore, that <insert name of target of bribe> was acting in (his/her) own right and that (he/she) owed no duty to another as a[n] (employee / agent / fiduciary), you may not find the defendant liable under this statute.

<Insert the applicable definitions:>

- An "employee" means any person who has entered into or works under any contract of service or apprenticeship with an employer.<sup>1</sup> An "employer" means any person, corporation, limited liability company, firm, partnership, voluntary association, joint stock association, the state and any public corporation within the state using the services of one or more employees for pay.<sup>2</sup>
- An "agent" is a person authorized by another to act for that other person with respect to a particular matter.<sup>3</sup> A "principal" is one who has permitted or directed another to act for the principal's benefit subject to the principal's direction and control.<sup>4</sup>
- A "fiduciary" includes any agent, trustee, partner, corporate officer, executor, administrator, trustee, conservator, guardian or any other representative owing a financial duty to another.<sup>5</sup>

### **Element 2 - Lack of consent**

The second element is that at the time (he/she) offered or agreed to offer the benefit, the defendant did not have the consent of the (employee's / agent's / fiduciary's) (employer / principal).

Thus, if you find that the state has failed to prove that the (employer / principal) did not consent to the defendant's offer or agreement to confer a benefit on (his/her) (employee / agent / fiduciary), you may not find the defendant liable under this statute. Consent may be express or it may be implied from the circumstances that you find existed. Consent must, however, have been actual and not simply an acquiescence brought about by fear or threat or a lack of knowledge of the intent of the defendant's (employee's / agent's / fiduciary's) actions. The act of consent must have been truly knowing and voluntary on the part of the (employer / principal).

### **Element 3 - Intent to influence**

The third element is that the defendant's actions were made with the specific intent to influence the (employee's / agent's / fiduciary's) conduct in relation to the (employer's / principal's) affairs. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

That is, the state must prove that the defendant knew that <insert name of target of bribe> was (in the employ / an agent/ a fiduciary) of another person and was not a principal acting in (his/her) own behalf and that the benefit was conferred or agreed to be conferred with the intent to affect some decision of <insert name of target of bribe> involving some exercise of (his/her) discretion with respect to (his/her) (employer's / principal's) affairs.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant conferred or agreed to confer a benefit upon an (employee / agent / fiduciary), 2) at the time (he/she) offered or agreed to offer the benefit, the defendant did not have the consent of the (employee's / agent's / fiduciary's) (employer / principal), and 3) the defendant's actions were made with the specific intent to influence the (employee's / agent's / fiduciary's) conduct in relation to the (employer's / principal's) affairs.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of commercial bribery, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 31-275 (9) (A) (i).

<sup>2</sup> General Statutes § 31-275 (10).

<sup>3</sup> Black's Law Dictionary (8th Ed. 2004).

<sup>4</sup> Black's Law Dictionary (8th Ed. 2004).

<sup>5</sup> General Statutes §§ 45a-199 and 42a-3-307 (a) (1).

## 4.1-6 Receiving a Commercial Bribe -- § 53a-161

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with receiving a commercial bribe. The statute defining this offense reads in pertinent part as follows:

a[n] (employee / agent / fiduciary) is guilty of receiving a commercial bribe when, without consent of (his/her) (employer / principal) (he/she) (solicits / accepts / agrees to accept) any benefit from another person upon an agreement or understanding that such benefit will influence (his/her) conduct in relation to (his/her) (employer's / principal's) affairs.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Employee/Agent/Fiduciary**

The first element is that the defendant was (an employee / an agent / a fiduciary) of (an employer / a principal).

*<Insert the applicable definitions:>*

- An "employee" means any person who has entered into or works under any oral or written contract of service or apprenticeship with an employer.<sup>1</sup> An "employer" means any person, corporation, limited liability company, firm, partnership, voluntary association, joint stock association, the state and any public corporation within the state using the services of one or more employees for pay.<sup>2</sup>
- An "agent" is a person authorized by another to act for that person with respect to a particular matter.<sup>3</sup> A "principal" is one who has permitted or directed another to act for the principal's benefit subject to the principal's direction and control.<sup>4</sup>
- A "fiduciary" includes any agent, trustee, partner, corporate officer, executor, administrator, trustee, conservator, guardian or any other representative owing a financial duty to another.<sup>5</sup>

### **Element 2 - Sought benefit without consent**

The second element is that without consent of (his/her) (employer / principal), the defendant (solicited / accepted / agreed to accept) any benefit from another person.

For purposes of this statute, "person" means a human being and, where appropriate, a public or private corporation, a limited liability company, an unincorporated association, a partnership, or a government or a governmental instrumentality.

"Benefit" means monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including a benefit to any person or entity in whose welfare the defendant is interested. It makes no difference that the defendant does not actually receive the benefit. The crime is committed if the defendant merely agrees to accept such benefit on behalf of (himself/herself) or another.

The defendant must have acted without the consent of (his/her) (employer / principal). Consent by the (employer / principal) may be express or it may be implied from the circumstances that you find existed. Consent must, however, have been actual and not simply an acquiescence brought about by fear or threat or a lack of knowledge of the intent of the defendant's actions. That is, the act of consent must have been truly knowing and voluntary on the part of the (employer / principal).

### **Element 3 - Intent to influence**

The third element is that the defendant (solicited / accepted / agreed to accept) a benefit upon an agreement or understanding that such benefit would influence the defendant's conduct in relation to the defendant's (employer's / principal's) affairs. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 4 - Agreement to influence**

The final element is that the other person agreed or understood that the benefit would influence the defendant's conduct in relation to the defendant's (employer's / principal's) affairs. It is not necessary that the state prove that there was a formal or express agreement between the defendant and the other person. It is sufficient to show that the parties knowingly engaged in a mutual plan to influence the defendant's conduct in relation to the defendant's (employer's / principal's) affairs. In addition, circumstantial evidence is sufficient to prove that there was such an agreement because agreements or understandings of this nature are often formed in secret and only rarely can be proven other than by circumstantial evidence.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was (an employee / an agent / a fiduciary) of (an employer / a principal), 2) the defendant, without consent of (his/her) (employer / principal), (solicited / accepted / agreed to accept) any benefit from another person, 3) the defendant intended that such benefit would influence the defendant's conduct in relation to the defendant's (employer's / principal's) affairs, and 4) the other person agreed or understood that the benefit would influence the defendant's conduct in relation to the defendant's (employer's / principal's) affairs.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of commercial bribery, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 31-275 (9) (A) (i).

<sup>2</sup> General Statutes § 31-275 (10).

<sup>3</sup> Black's Law Dictionary (8th Ed. 2004).

<sup>4</sup> Black's Law Dictionary (8th Ed. 2004).

<sup>5</sup> General Statutes §§ 45a-199 and 42a-3-307 (a) (1).

## 4.1-7 Bid Rigging -- § 53a-161a

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with bid rigging. The statute defining this offense reads in pertinent part as follows:

no (person / firm / corporation / association / partnership) who bids, or intends to bid, for any contract to be awarded by any (commission, agency, or department / political subdivision) of the state shall induce or attempt to induce any other (person / firm / corporation / association / partnership) (to submit / not to submit) a bid or proposal for the purpose of restricting competition.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Made or intended to make a bid**

The first element is that the defendant was a[n] (person / firm / corporation / association / partnership) who made a bid or intended to make a bid, for a contract to be awarded by any (commission, agency, or department / political subdivision) of the state.

For purposes of this statute, "person" means a human being and, where appropriate, a public or private corporation, a limited liability company, an unincorporated association, a partnership, or a government or a governmental instrumentality. Under our law, a person is criminally liable when (he/she) performs or causes to be performed in the name of or in behalf of a corporation or a limited liability company, conduct constituting an offense.<sup>1</sup>

The state must also prove that the defendant submitted a bid or intended to submit a bid for a public contract. A "bid" or "proposal" means the submission of prices by persons, firms or corporations competing for a contract to provide supplies, materials, equipment or contractual services.<sup>2</sup> The intent to submit a bid does not require the actual submission of the bid. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

<Insert the applicable definitions:>

- A "commission, agency or department of the state" includes any commission, agency, department, officer, board, council, institution or other agency of the state government.<sup>3</sup>
- A "political subdivision of the state" means any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of this state.<sup>4</sup>

### **Element 2 - Induced another**

The second element is that the defendant induced or attempted to induce another (person / firm / corporation / association / partnership) (to submit / not to submit) a bid or proposal for the contract. "Induce" means to move to action by persuasion or by influence. Additionally, the state must prove that the defendant submitted (his/her) bid or had the intent to submit a bid before (he/she) induced or attempted to induce the other person or firm.

**Element 3 - Intent to restrict competition**

The third element is that the defendant specifically intended to restrict competition for the said contract. "To restrict" means to limit.<sup>5</sup> "Competition" means the effort or action of two or more commercial interests to obtain the same business from third parties.<sup>6</sup>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was a[n] (person / firm / corporation / association / partnership) who bid or intended to bid, for a contract to be awarded by any (commission, agency, or department / political subdivision) of the state, 2) the defendant induced or attempted to induce another (person / firm / corporation / association / partnership) (to submit / not to submit) a bid or proposal for said contract, and 3) the defendant specifically intended to restrict competition for the said contract.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of bid rigging, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-11.

<sup>2</sup> General Statutes § 4a-50 (4).

<sup>3</sup> General Statutes § 4a-50 (1).

<sup>4</sup> General Statutes § 1-200 (1) (A).

<sup>5</sup> Black's Law Dictionary (8th Ed. 2004).

<sup>6</sup> Id.

## 4.1-8 Disclosure of Bid or Proposal -- § 53a-161b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with disclosure of a bid or proposal. The statute defining this offense reads in pertinent part as follows:

unless otherwise required by law, the prices quoted in a (bid / proposal) for any contract to be awarded by any (commission, agency or department / political subdivision) of the state shall not be disclosed by the (bidder / offeror) prior to the (opening of a bid / the award of a proposal), directly or indirectly to any (other bidder / other offeror / competitor).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Bidder/Offeror

The first element is that the defendant was a[n] (bidder / offeror) for a contract to be awarded by any (commission, agency or department of the state / political subdivision) of the state. *<Insert the applicable definitions:>*

- "Bidder" means a person, firm or corporation submitting a competitive bid in response to a solicitation.<sup>1</sup>
- "Offeror" means a person, firm or corporation submitting a proposal in response to a request for proposals.<sup>2</sup>
- A "commission, agency or department of the state" includes any commission, agency, department, officer, board, council, institution or other agency of the state government.<sup>3</sup>
- A "political subdivision of the state" means any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of this state.<sup>4</sup>

A ("bid" / "proposal") means the submission of prices by persons, firms or corporations competing for a contract to provide buildings, facilities, supplies, materials, equipment, contractual services or any other facilities, goods or services.<sup>5</sup>

### Element 2 - Disclosed prices

The second element is that the defendant, either directly or indirectly, disclosed the prices quoted in (his/her) (bid / proposal) to another (bidder / offeror / competitor) for the contract.

### Element 3 - Prior to award

The third element is that the disclosure was made prior to the (opening of the bid / the award of the proposal) by the commission, agency or department. *<Insert the applicable definitions:>*

- "Opening" means the public opening of a bid at the time stated in the notice soliciting such bid.<sup>6</sup>
- "Awarding" means the decision by the (commission, agency or department of the state / political subdivision) to offer a contract to a[n] (bidder / offeror).

#### **Element 4 - Intent to disclose**

The fourth element is that the defendant intended to make the disclosure to another (bidder / offeror / competitor). The state need only prove that the defendant intentionally and not inadvertently or accidentally engaged in (his/her) actions, i.e., to make the disclosure. It does not matter what the result of the disclosure was. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was a[n] (bidder / offeror) for a contract to be awarded by any (commission, agency or department of the state / political subdivision) of the state, 2) the defendant, either directly or indirectly, disclosed the prices quoted in (his/her) (bid / proposal) to another (bidder / offeror / competitor) for the contract, 3) the disclosure was made prior to the (opening of the bid / the award of the proposal) by the (commission / agency / department), and 4) the defendant intended to make the disclosure to another (bidder / offeror / competitor).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of disclosure of a bid, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 4a-50 (6).

<sup>2</sup> General Statutes § 4a-50 (7).

<sup>3</sup> General Statutes § 4a-50 (1).

<sup>4</sup> General Statutes § 1-200 (1) (A).

<sup>5</sup> General Statutes § 4a-50 (4).

<sup>6</sup> General Statutes § 2-71p (b) (2).

#### ***Commentary***

This statute "was intended to penalize collusion among contractors seeking state or municipal contracts and not the corrupt public official." *State v. Rado*, 14 Conn. App. 322, 330, cert. denied, 208 Conn. 813, cert. denied, 488 U.S. 927, 109 S.Ct. 311, 102 L.Ed.2d 330 (1988).

## 4.1-9 Receiving Kickbacks -- § 53a-161c (a) (1)

Revised to April 23, 2010

The defendant is charged [in count \_\_\_\_] with receiving kickbacks. The statute defining this offense reads in pertinent part as follows:

a person is guilty of receiving kickbacks when (he/she) by (force / intimidation / threat of procuring dismissal from employment) induces any person who (is employed in the construction, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the state / who has a contract with the state), to give up any part of the compensation to which (he/she) is entitled.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Intent to induce**

The first element is that the defendant induced another person to give up any compensation to which such person was entitled. For purposes of this statute, "person" means a human being and, where appropriate, a public or private corporation, a limited liability company, an unincorporated association, a partnership, or a government or a governmental instrumentality. "Induce" means to move to action by persuasion or influence.

The state must also prove beyond a reasonable doubt that by (his/her) actions the defendant specifically intended to induce the other person to give up any compensation to which the other person was entitled. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 2 - Third party**

The second element is that the person induced by the defendant <insert one of the following:>

- was employed in the construction, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the state.
- had a contract with the state.

### **Element 3 - Force/Intimidation/Threat**

The third element is that the defendant used (force / intimidation / threat of procuring dismissal) to induce the other person. <Insert the applicable definitions:>

- "Use of force" means use of a dangerous instrument or use of actual physical force or violence or superior physical strength against another person. "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use,

may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

- "Intimidation" means unlawful coercion, unlawful threats, or extortion.<sup>1</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant induced <insert name of person> to give up any compensation to which (he/she) was entitled, 2) <insert name of person> (was employed in <insert nature of employment> / had a contract with the state), and 3) the defendant used (force / intimidation / threat of procuring dismissal) to induce <insert name of person>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of receiving kickbacks, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Black's Law Dictionary (8th Ed. 2004).

## 4.1-10 Receiving Kickbacks -- § 53a-161c (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with receiving kickbacks. The statute defining this offense reads in pertinent part as follows:

a person is guilty of receiving kickbacks when (he/she) knowingly (solicits / accepts / agrees to accept) any benefit, in cash or in kind, from another person upon an agreement or understanding that such benefit will influence such person's conduct in relation to referring an individual or arranging for the referral of an individual for the furnishing of any goods, facilities or services to such other person under contract to provide goods, facilities or services to a local, state or federal agency.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Benefit**

The first element is that the defendant knowingly solicited, accepted or agreed to accept any benefit,<sup>1</sup> in cash or in kind, from another person. A person acts "knowingly" with respect to conduct when (he/she) is aware that (his/her) conduct is of such nature. <See *Knowledge, Instruction 2.3-3.*>

For purposes of this statute, "person" means a human being and, where appropriate, a public or private corporation, a limited liability company, an unincorporated association, a partnership, or a government or a governmental instrumentality.

"Benefit" means monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including a benefit to any person or entity in whose welfare the defendant is interested. It makes no difference that the defendant does not actually receive the benefit. The crime is committed if the defendant merely agrees to accept such benefit on behalf of (himself/herself) or another.

### **Element 2 - Contract**

The second element is that the other person had a contract to provide goods, facilities or services to a local, state or federal agency. Goods, facilities or services include buildings, facilities, supplies, materials, equipment, contractual services or any other goods, facilities or services. A local, state or federal agency includes any commission, agency, department, officer, board, council, institution or other agency of a local, state or federal government.

### **Element 3 - Intent**

The third element is that the defendant (solicited / accepted / agreed to accept) this benefit upon an agreement or understanding that such benefit would influence the defendant's conduct in relation to referring an individual or arranging for the referral of an individual for the furnishing of any goods, facilities or services to such other person. "Refer" means to send, direct or recommend and "referral" means the act of sending, directing or recommending.<sup>2</sup>

It is not necessary that the state prove that there was a formal or express agreement between the defendant and the other person. It is sufficient to show that the parties knowingly and intentionally engaged in a mutual plan to influence the defendant's conduct in relation to referring an individual or arranging for the referral of an individual for the furnishing of any goods, facilities or services to such other person. In addition, circumstantial evidence is sufficient to prove that there was an agreement because agreements or understandings of this nature are often formed in secret and only rarely can be proven other than by circumstantial evidence.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant knowingly solicited, accepted or agreed to accept any benefit, in cash or in kind, from *<insert name of person>*, 2) *<insert name of person>* had a contract to provide goods, facilities or services to a local, state or federal agency, and 3) the defendant (solicited / accepted / agreed to accept) this benefit upon an agreement or understanding that such benefit would influence the defendant's conduct in relation to referring an individual or arranging for the referral of an individual for the furnishing of any goods, facilities or services to another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of receiving kickbacks, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> For purposes of this subsection, "benefit" does not include the forms of remuneration listed in 42 C.F.R. § 1001.952 Medicare and State Health Care Programs. General Statutes § 53a-161c (a).

<sup>2</sup> General Statutes § 53a-161c (a).

## 4.1-11 Receiving Kickbacks -- § 53a-161c (a) (3)

Revised to April 23, 2010

The defendant is charged [in count \_\_\_\_] with receiving kickbacks. The statute defining this offense reads in pertinent part as follows:

a person is guilty of receiving kickbacks when (he/she) by (force / intimidation / threat) induces another person who has a contract with the state to give up any part of the compensation to which such other person is entitled.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Inducement**

The first element is that the defendant induced another person to give up any compensation to which the other person was entitled. "Induce" means to move to action by persuasion or by influence.

For purposes of this statute, "person" means a human being and, where appropriate, a public or private corporation, a limited liability company, an unincorporated association, a partnership, or a government or a governmental instrumentality.

The state must also prove beyond a reasonable doubt that by (his/her) actions the defendant specifically intended to induce the other person to give up compensation to which the other person was entitled. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 2 - Contract**

The second element is that such other person had a contract with the state. A contract with the state means a contract to provide buildings, facilities, supplies, materials, equipment, contractual services or any other goods or services to any commission, agency or department of the state of Connecticut.

### **Element 3 - Force/Intimidation/Threat**

The third element is that the defendant used (force / intimidation / threat) against the other person. <Insert the applicable definitions:>

- "Use of force" means use of a dangerous instrument or use of actual physical force or violence or superior physical strength against another person. "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use

or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

- "Intimidation" means unlawful coercion, unlawful threats, or extortion.<sup>1</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant induced *<insert name of person>* to give up any compensation to which the other person was entitled, 2) *<insert name of person>* had a contract with the state, and 3) the defendant used (force / intimidation / threat) against *<insert name of person>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of receiving kickbacks, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Black's Law Dictionary (8th Ed. 2004).

## 4.1-12 Paying a Kickback -- § 53a-161d (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with paying a kickback. The statute defining this offense reads in pertinent part as follows:

a person is guilty of paying a kickback when (he/she) knowingly offers or pays any benefit, in cash or kind, to any person with intent to influence such person to refer an individual, or to arrange for the referral of an individual, for the furnishing of any goods, facilities or services for which a claim for benefits or reimbursement has been filed with a local, state or federal agency.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Benefit**

The first element is that the defendant knowingly offered or paid any benefit, in cash or kind, to another person. A person acts "knowingly" with respect to conduct when (he/she) is aware that (his/her) conduct is of such nature. <See *Knowledge, Instruction 2.3-3.*>

"Benefit" means monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including a benefit to any person or entity in whose welfare (he/she) is interested. It makes no difference that the beneficiary does not accept or receive the benefit. The crime is committed if the defendant merely makes the offer to confer such a benefit.

For purposes of this statute, "person" is defined as a human being and, where appropriate, a public or private corporation, a limited liability company, an unincorporated association, a partnership, a government or a governmental instrumentality.

### **Element 2 - Intent to influence**

The second element is that the defendant specifically intended to influence another person to refer an individual or to arrange for the referral of an individual for the furnishing of any goods, facilities or services. "Refer" means to send, direct or recommend and "referral" means the act of sending, directing or recommending.<sup>1</sup> Goods, facilities or services includes buildings, facilities, supplies, materials, equipment, contractual services or any other goods, facilities or services.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 3 - Claim filed**

The third element is that a claim for benefits or reimbursement for such goods, facilities or services had been filed with a local, state or federal agency. A local, state or federal agency includes any commission, agency, department, officer, board, council, institution or other agency of a local, state or federal government.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant knowingly offered or paid any benefit, in cash or kind, to <insert name of person>, 2) the defendant intended to influence <insert name of person> to refer an individual or to arrange for the referral of an individual for the furnishing of any goods, facilities or services, and 3) a claim for benefits or reimbursement was filed with a local, state or federal agency.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of paying a kickback, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-161c (a).

## 4.1-13 Paying a Kickback -- § 53a-161d (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with paying a kickback. The statute defining this offense reads in pertinent part as follows:

a person is guilty of paying a kickback when (he/she) knowingly offers or pays any benefit, in cash or kind, to any person with intent to influence such person to purchase, lease, order or arrange for or recommend the purchasing, leasing or ordering of any goods, facilities or services for which a claim of benefits or reimbursement has been filed with a local, state or federal agency.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Benefit**

The first element is that the defendant knowingly offered or paid any benefit, in cash or kind, to another person. A person acts "knowingly" with respect to conduct when (he/she) is aware that (his/her) conduct is of such nature. <See *Knowledge, Instruction 2.3-3.*>

"Benefit" means monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including a benefit to any person or entity in whose welfare (he/she) is interested. It makes no difference that the beneficiary does not accept the benefit. The crime is committed if the defendant merely makes the offer to confer such a benefit.

For purposes of this statute, "person" is defined as a human being and, where appropriate, a public or private corporation, a limited liability company, an unincorporated association, a partnership, a government or a governmental instrumentality.

### **Element 2 - Intent to induce**

The second element is that the defendant specifically intended to influence the other person to purchase, lease, order or arrange for or recommend the purchasing, leasing or ordering of any goods, facilities or services. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

Goods, facilities or services includes buildings, facilities, supplies, materials, equipment, contractual services or any other goods, facilities or services.

### **Element 3 - Claim filed**

The third element is that a claim for benefits or reimbursement for such goods, facilities or services had been filed with a local, state or federal agency. A local, state or federal agency includes any commission, agency, department, officer, board, council, institution or other agency of a local, state or federal government.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant knowingly offered or paid any benefit, in cash or kind, to <insert name of person>, 2) the defendant

intended to influence <insert name of person> to purchase, lease, order or arrange for or recommend the purchasing, leasing or ordering of any goods, facilities or services, and 3) a claim for benefits or reimbursement was filed with a local, state or federal agency.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of paying a kickback, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 4.1-14 Vendor Fraud -- § 53a-290, § 53a-291, § 53a-292, § 53a-293, § 53a-294, § 53a-295, and § 53a-296

Revised to December 1, 2007

**Note:** General Statutes § 53a-290 defines the offense of vendor fraud. The degree of the offense depends on the amount of payment fraudulently obtained by the defendant. See § 53a-291 (1st degree: in excess of \$10,000), § 53a-292 (2nd degree: in excess of \$5,000), § 53a-293 (3rd degree: in excess of \$1,000) § 53a-294 (4th degree: in excess of \$500), § 53a-295 (5th degree: in excess of \$250), § 53a-296 (6th degree: \$250 or less).

The defendant has been charged with vendor fraud. The statute defining this offense reads in pertinent part as follows:

a person commits vendor fraud when, with intent to defraud and acting on such person's own behalf or on behalf of an entity, such person provides goods or services to a beneficiary under *<insert the appropriate statutory reference and state program alleged>*<sup>1</sup> and *<insert appropriate subsection:>*

- § 53a-290 (1): presents for payment any false claim for goods or services performed.
- § 53a-290 (2): accepts payment for goods or services performed, which exceeds either the amounts due for goods or services performed, or the amounts authorized by law for the cost of such goods or services.
- § 53a-290 (3): solicits to perform services for or sell goods to any such beneficiary, knowing that such beneficiary is not in need of such goods or services.
- § 53a-290 (4): sells goods to or performs services for any such beneficiary without prior authorization by the department of social services, when prior authorization is required by said department for the buying of such goods or the performance of any service.
- § 53a-290 (5): accepts from any person or source other than the state an additional compensation in excess of the amount authorized by law.

For purposes of this statute, a "person" is defined as a human being and, where appropriate, a public or private corporation, a limited liability company, an unincorporated association, a partnership, a government or a governmental instrumentality. Under our law, a person is criminally liable when (he/she) performs or causes to be performed in the name of or in behalf of a corporation or a limited liability company, conduct constituting an offense.<sup>2</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Provision of goods or services**

The first element is that the defendant provided goods or services to a beneficiary under sections *<insert appropriate statutory reference>*. "Beneficiary" and "recipient" mean any adult or minor child receiving assistance under the provisions of *<insert appropriate statutory reference>*.<sup>3</sup>

### **Element 2 - Intent to defraud**

The second element is that the defendant provided these goods or services with the intent to defraud a local, state or federal government agency. A person acts with the intent to defraud when (he/she) deceives or tricks another person with the intent to deprive that person of (his/her) right, or in some manner to do (him/her) an injury. The word "defraud" means to practice fraud, to cheat or trick, to deprive a person of property or any interest or right by fraud, deceit or artifice. The meaning of "fraud," both in its legal usage and its common usage, is the same: a deliberately planned purpose and intent to cheat or deceive or unlawfully deprive someone of some advantage, benefit or property. "Fraudulently" means done, made or effected with a purpose or design to carry out a fraud. <See *Intent to Defraud, Instruction 2.3-6.*>

A local, state or federal agency includes any commission, agency, department, officer, board, council, institution or other agency of a local, state or federal government.

### **Element 3 - For benefit**

The third element is that the defendant provided such goods or services for (his/her) own benefit or for the benefit of any entity. "Benefit" means any monetary or other advantage.

### **Element 4 - Fraudulent action**

The fourth element is that the defendant <*insert as appropriate:*>

- **§ 53a-290 (1):** presented for payment a false claim for goods or services performed. The state must prove that the claim presented by the defendant was, in fact, false. In addition, the state must prove that the defendant fully realized and knew that the claim that (he/she) made was false or untrue. No matter how careless the defendant may have been in failing to check the accuracy of (his/her) claim, mere negligence would not constitute a fraudulent intention. Furthermore, the defendant must also have presented the false claim for the purpose of inducing the agency to rely upon it in making payment. Thus, the defendant must have intended to deceive, and by (his/her) deceit, to obtain payment. In addition, this two-fold intention must have been present in the mind of the defendant at the time that (he/she) presented the claim for payment. If it was present at that time, a later formed intention to return the payment would be no defense.
- **§ 53a-290 (2):** accepted payment for goods or services performed, which exceeded either the amounts due for goods or services performed, or the amounts authorized by law for the cost of such goods or services. To "accept payment" means to acquire possession, control or title over the payment. Actual physical possession is not essential.
- **§ 53a-290 (3):** solicited to perform services for or to sell goods to any such beneficiary, knowing that such beneficiary is not in need of such goods or services. A person acts "knowingly" with respect to conduct when (he/she) is aware that (his/her) conduct is of such nature. <See *Knowledge, Instruction 2.3-3.*>
- **§ 53a-290 (4):** sold goods to or performed services for any beneficiary without prior authorization by the department of social services, when prior authorization was required by the department for the buying of such goods or the performance of any service. For you to find the defendant liable, the state must prove that, without prior authorization, the defendant actually delivered goods to, or actually performed services for, a beneficiary.
- **§ 53a-290 (5):** accepted from any person or source other than the state additional compensation in excess of the amount authorized by law.

### **Element 5 - Value of goods or services**

The fifth element is that the goods or services involved had a value that *<insert as appropriate:>*

- **First degree:** exceeded \$10,000.
- **Second degree:** exceeded \$5,000.
- **Third degree:** exceeded \$1,000.
- **Fourth degree:** exceeded \$500.
- **Fifth degree:** exceeded \$250.
- **Sixth degree:** did not exceed \$250.

In making this determination, you may add or aggregate the payments for the goods or services involved, but you can only aggregate amounts if the fraud was committed pursuant to one scheme or course of conduct, whether from the same or several persons.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant provided goods or services to a beneficiary under sections *<insert appropriate statutory reference>*, 2) the defendant provided these goods or services with the intent to defraud a local, state or federal government agency, 3) the defendant provided such goods or services for (his/her) own benefit or the benefit of any entity, and 4) the defendant *<insert alleged fraudulent action>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of vendor fraud, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> These include § 17b-22 (provision of social services), § 17b-75 to § 17b-77, inclusive (state aid program, medical assistance, TANF, food stamps), § 17b-79 to § 17b-103, inclusive (same), § 17b-180a (TANF), § 17b-183 (TANF), § 17b-260 to § 17b-262, inclusive (medical assistance/Medicaid), § 17b-264 to § 17b-285, inclusive (same), § 17b-357 to § 17b-362, inclusive (nursing facilities/Medicaid), § 17b-600 to § 17b-604, inclusive (optional state assistance/SSI), § 17b-749 (child care custody), § 17b-807 and § 17b-808 (emergency shelters for homeless), and Title XIX of the Social Security Act.

<sup>2</sup> General Statutes § 53a-11.

<sup>3</sup> General Statutes §§ 17b-75 and 17b-290.

## **4.2 FALSE STATEMENT**

**4.2-1 False Statement on a Certified Payroll -- §  
53a-157a**

**4.2-2 False Statement -- § 53a-157b**

## 4.2-1 False Statement on a Certified Payroll -- § 53a-157a

Revised to November 6, 2014

**Note: This instruction is for crimes committed on or after October 1, 2013. Public Act No. 13-144, § 1, renamed the offense, though the elements remained the same. For the earlier instruction, see Instruction 4.2-1A in the Archive.**

The defendant is charged [in count \_\_\_\_] with false statement on a certified payroll. The statute defining this offense reads in pertinent part as follows:

a person is guilty of false statement on a certified payroll when (he/she) intentionally makes a false written statement on a certified payroll for a public works project<sup>1</sup> which (he/she) does not believe to be true and which statement is intended to mislead a contracting authority or the labor commissioner in the exercise of (his/her) authority or the fulfillment of (his/her) duties.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Contract for public works project**

The first element is that a contract existed between *<insert name of contractor>* and *<insert name of agency or political subdivision>* for *<insert specific nature of contract>*.

### **Element 2 - False statement**

The second element is that the defendant intentionally made a false written statement on a certified payroll.

### **Element 3 - Known to be false**

The third element is that the defendant did not believe the statement to be true.

### **Element 4 - Intent to mislead**

The final element is that the defendant made the statement with the specific intent to mislead a contracting authority or the labor commissioner in the exercise of (his/her) authority or the fulfillment of (his/her) duties. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) there was a contract between *<insert name of contractor>* and *<insert name of agency or political subdivision>* for *<insert specific nature of contract>*, 2) the defendant intentionally made a false written statement on a certified payroll, 3) the defendant did not believe the statement was true, and 4) the defendant made the statement with the specific intent to mislead a contracting authority or the labor commissioner in the exercise of (his/her) authority or the fulfillment of (his/her) duties.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of false statement on a certified payroll, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Pursuant to General Statutes § 31-53, every employer on a public works project shall submit weekly to the contracting agency a certified payroll indicating, among other things, that the rate of wages paid to each mechanic, laborer or workman and the amount of payment or contributions paid or payable on behalf of each such employee to any employee welfare fund, are not less than the prevailing rate of wages and the amount of payment or contributions paid or payable on behalf of each such employee to any employee welfare fund are not less than those required by the contract to be paid. See *Electrical Contractors, Inc. v. Tianti*, 223 Conn. 573 (1992), for a discussion of General Statutes § 31-53.

## 4.2-2 False Statement -- § 53a-157b

Revised to November 6, 2014

**Note: This instruction is for crimes committed on or after October 1, 2013. Public Act No. 13-144, § 2, renamed the offense and changed the wording of the statute, though the elements remained the same. For the earlier instruction, see Instruction 4.2-2A in the Archive.**

The defendant is charged [in count \_\_\_\_] with false statement in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of false statement when (he/she) (1) intentionally makes a false written statement that (he/she) does not believe to be true with the intent to mislead a public servant in the performance of (his/her) official function, and (2) makes such statement under oath or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Statement**

The first element is that the defendant made a written statement (under oath / pursuant to a form bearing notice). *<Insert the applicable definitions:>*

- A written statement is made under oath when the person making the statement makes a solemn declaration, before a person authorized by law to administer oaths, that the assertions contained in the written statement are true.
- A "form bearing notice" is a form that states on its face that any false statements made on the form are punishable and that such notice was authorized by law.

### **Element 2 - Intentionally made**

The second element is that the defendant intentionally made the written statement. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Element 3 - Known to be untrue**

The third element is that the defendant did not, at the time that (he/she) made the statement, believe the statement to be true.

### **Element 4 - Intent to mislead**

The fourth element is that the statement was specifically intended to mislead a public servant in the performance of (his/her) official function. A "public servant" is an officer or employee of the government or a quasi-public agency, elected or appointed, and any person participating as adviser, consultant or otherwise, paid or unpaid, in performing a governmental function. It is immaterial whether the public servant was in fact misled. It is sufficient if it is established that the statement was intended to mislead the public servant in the performance of (his/her) official function.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant made a written statement (under oath / pursuant to a form bearing notice), 2) the defendant made the statement intentionally, 3) the defendant knew the statement was not true, and 4) the defendant made the false statement with the specific intent to mislead a public servant in the performance of (his/her) official function.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of false statement, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary***

See *State v. Brazzell*, 38 Conn. Sup. 695, 697-98 (App. Sess. 1983).

## **4.3 INTERFERENCE WITH AN OFFICIAL**

- 4.3-1 Interfering with an Officer -- § 53a-167a**
- 4.3-2 Failure to Assist an Officer -- § 53a-167b**
- 4.3-3 Assault of Public Safety or Emergency Medical Personnel -- § 53a-167c**
- 4.3-4 Assault of a Prosecutor -- § 53a-167d**
- 4.3-5 Interference with a Search -- § 54-33d**

## 4.3-1 Interfering with an Officer -- § 53a-167a

Revised to May 23, 2013 (modified November 6, 2014)

The defendant is charged [in count \_\_\_\_] with interfering with an officer. The statute defining this offense reads in pertinent part as follows:

a person is guilty of interfering with an officer when such person obstructs, resists, hinders or endangers any (peace officer / special policeman / motor vehicle inspector / firefighter) in the performance of such (peace officer's / special policeman's / inspector's / firefighter's) duties.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Interfered with an officer**

The first element is that the defendant obstructed, resisted, hindered or endangered a *<insert type of officer>*.<sup>1</sup> This element requires that you find that *<insert name of officer>* was a *<insert type of officer>*.

There are four words describing the ways interference may be committed. "Obstructs" means to interpose obstacles or impediments, to impede or in any manner intrude or prevent. "Resists" means to oppose; fight, argue or work against; or refuse to cooperate with. "Hinders" means to hold back, to delay, impede or prevent action. "Endangers" means to expose to danger or harm. None of these definitions require the use of direct force or the exercise of direct means. For purposes of this offense, they all prohibit any act that would amount to preventing or delaying the activities of the police in the performance of their duties. The use of force by the defendant is not required, but there must be some affirmative act or exertion that interferes with the officer.<sup>2</sup>

### **Element 2 - In the performance of duties<sup>3</sup>**

The second element is that the conduct of the defendant occurred while the officer was in the performance of (his/her) duties. The phrase "in the performance of (his/her) duties" means that the officer was acting within the scope of what (he/she) is employed to do, and that (his/her) conduct was related to (his/her) official duties. The question of whether (he/she) was acting in good faith in the performance of (his/her) duties is a factual question for you to determine on the basis of the evidence in the case. *<Summarize evidence if appropriate.>*

*[<If the alleged interference occurred during an arrest or an attempted escape:>*

In determining whether the officer was acting in the performance of (his/her) duties, you must consider another provision in our law that justifies the use of physical force by officers in (making an arrest / preventing an escape). That statute provides that an officer is justified in using physical force upon another person when and to the extent that (he/she) reasonably believes such to be necessary to (effect an arrest / prevent an escape from custody) of a person whom (he/she) reasonably believes to have committed an offense, unless (he/she) knows that the arrest or custody is unauthorized.<sup>4</sup> An officer's use of force to (effect the arrest / prevent the escape from custody) is justified only so far as (he/she) reasonably believes that a person has

committed an offense. The term "offense" means any crime or violation which constitutes a breach of any law and which is punishable by imprisonment, fine or both. The officer need not have actual knowledge that an offense was committed, but only a reasonable belief. A reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the reasonably believed facts or circumstances would not in law constitute an offense, for example, the officer was mistaken that the actions of the person constitute an offense, the officer would not be justified in the use of physical force to (make an arrest / prevent an escape from custody).

It is no defense that the arrest was wrongful, as long as the officer reasonably believed that the defendant had committed an offense. That is, a person is not permitted to use physical force to resist being arrested, even if the person sincerely believes that the arrest is unwarranted, by a reasonably identifiable officer.<sup>5</sup>

It is necessary, however, that the person being arrested either knew or should have known that the other person was an officer. The standard is whether a reasonable person under the same circumstances as the defendant would have identified the other person as an officer. In determining this, consider such facts as whether the other person wore a uniform, whether (he/she) identified (himself/ herself) or showed (his/her) badge or other identification, or the manner in which (he/she) acted and conducted (himself/herself). It is irrelevant whether the officer was officially on duty at the time of the attempted arrest, as long as (he/she) was identifiable as an officer.<sup>6</sup>

If you find that the force used by the officer was not reasonable, you will find that *<insert name of officer>* was not acting within the performance of (his/her) official duties while attempting to (arrest / prevent the escape of) the defendant.]

[*<If the alleged interference occurred in a correctional institution:>*

In determining whether the officer was acting in the performance of (his/her) duties, you must consider another provision in our law that justifies the use of physical force by correction officers. That statute provides that an authorized official of a correctional institution or facility may, in order to maintain order and discipline, use such physical force as is reasonable and authorized by the rules and regulations of the department of correction.<sup>7</sup>

If you find that the force used by the officer was not reasonable, you will find that *<insert name of officer>* was not acting within the performance of (his/her) official duties while attempting to (arrest / prevent the escape of) the defendant.]

### **Element 3 - Intent to interfere**

The third element is that the defendant acted with the specific intent to obstruct, resist, hinder or endanger the officer in the performance of (his/her) official duties.<sup>8</sup> A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

## Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant obstructed, resisted, hindered or endangered a <insert type of officer>, <insert name of officer>, 2) while <insert name of officer> was in the performance of (his/her) official duties, and 3) the defendant specifically intended to obstruct, resist, hinder or endanger <insert name of officer>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of interfering with an officer, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See definitions of peace officer and firefighter in the Glossary. A "special policeman" is appointed by the Commissioner of Emergency Services and Public Protection, pursuant to General Statutes § 29-18b, to act in the special investigation section of the Department of Revenue Services and has all the powers of a state policeman. A "motor vehicle inspector" is appointed by the Commissioner of Motor Vehicles, pursuant to General Statutes § 14-8, and has "the same authority to make arrests or issue citations for violation of any statute or regulation relating to motor vehicles and to enforce said statutes and regulations as policemen or state policemen in their respective jurisdictions." Motor vehicle inspectors were added to this offense by Public Acts 2008, No. 08-150, § 52, effective October 1, 2008.

<sup>2</sup> The words "hinders," "endangers" or "interferes" are to be broadly construed to prohibit any act that would amount to meddling in or hampering the activities of the police in the performance of their duties. *State v. Silva*, 285 Conn. 447, 459-60 (2008). "[T]he four means of interfering listed in [the] statute are not conceptually distinct, and do not constitute disjunctive methods by which interfering with an officer can be committed." *State v. Laws*, 37 Conn. App. 276, 297, cert. denied, 234 Conn. 907 (1995). The refusal to provide identification upon request by a police officer investigating a crime comes within the scope of the conduct proscribed by this statute. *State v. Aloï*, 280 Conn. 824 (2007). Giving a false name to an officer also comes within the scope of the statute. *State v. Williams*, 110 Conn. App. 778, 793-98, cert. denied, 289 Conn. 957 (2008).

<sup>3</sup> Depending on the facts of the case, it may be necessary to instruct on the specific duties of the officer according to the evidence presented. This instruction includes the statutory provisions concerning the permitted use of physical force by police officers and correction officers. See *State v. Davis*, 261 Conn. 553 (2002); *State v. Salters*, 78 Conn. App. 1, cert. denied, 265 Conn. 912 (2003).

<sup>4</sup> General Statutes § 53a-22 (b); *State v. Baptiste*, 133 Conn. App. 614, 627-28 (2012), appeal dismissed, 310 Conn. 790 (2014) (reversing conviction because jury was not instructed on this aspect of the performance of a police officer's duties). See also Use of Physical Force by Peace Officer in Making Arrest or Preventing Escape, Instruction 2.8-6.

<sup>5</sup> Probable cause to arrest is not an element of this offense. *State v. Wearing*, 98 Conn. App. 350, 355 (2006). General Statutes § 53a-23 provides that "[a] person is not justified in using physical force to resist an arrest by a reasonably identifiable peace officer, whether such arrest is legal or illegal." See *State v. Sitaras*, 106 Conn. App. 493, 507, cert. denied, 287 Conn. 906

(2008) (court improperly took from jury the issue as to whether the defendant used physical force or not).

<sup>6</sup> See *State v. Davis*, supra, 261 Conn. 564-65.

<sup>7</sup> General Statutes § 53a-18 (2).

<sup>8</sup> "Although it does not appear in the statutory language . . . intent is an element of the crime of interfering with an officer." *State v. Jenkins*, 40 Conn. App. 601, 609, cert. denied, 237 Conn. 918 (1996); see also *State v. Nita*, 27 Conn. App. 103, 111-12, cert. denied, 222 Conn. 903, cert. denied, 506 U.S. 844, 113 S.Ct. 133, 121 L.Ed.2d 86 (1992); *State v. Peruta*, 24 Conn. App. 598, 603, cert. denied, 219 Conn. 912 (1991). The statute has thus been construed to apply only to actions that are intended to interfere with the performance of an officer's duty and to exclude any accidental or inadvertent interference. *State v. Walker*, 34 Conn. Sup. 548, 550 (App. Sess. 1976).

### ***Commentary***

"If [the officer] is acting under a good faith belief that he is carrying out [his] duty, and if his actions are reasonably designed to that end, he is acting in the performance of his duties. . . . The phrase in the performance of his official duties means that the police officer is simply acting within the scope of what [he] is employed to do. The test is whether the [police officer] is acting within that compass or is engaging in a personal frolic of his own. . . . The question of whether a police officer was acting in good faith in the performance of his duties is a factual question for the jury to determine on the basis of all the circumstances of the case and under appropriate instructions from the court." (Citations omitted; internal quotation marks omitted.) *State v. Torwich*, 38 Conn. App. 306, 315-16, cert. denied, 235 Conn. 905 (1995); see also *State v. Casanova*, 255 Conn. 581, 592-93 (2001).

### ***Defenses***

An individual charged only with violations of §§ 53a-167c (a) and 53a-167a (a) is not entitled to a self-defense instruction. If the jury finds that the officers were not acting in the course of their duties, the defendant could not be found guilty. If the jury finds that they were acting in the course of their duties, then § 53a-23 would bar the self-defense claim. *State v. Davis*, supra, 261 Conn. 553; see also *State v. Salters*, supra, 78 Conn. App. 8 (applying the rationale of *Davis* to correction officers).

### ***Lesser included offenses***

When a defendant is charged with both interfering with an officer and assault on an officer, the two charges may be separate offenses or in the relationship of greater/lesser offense depending on the subsection of 53a-167c that the defendant is charged with. See *State v. Jay*, 124 Conn. App. 294, 311 (2010), cert. denied, 299 Conn. 927 (2011) (hurling saliva under § 53a-167c (a) (5) is materially different from conduct that causes physical injury or includes hurling a bottle or other object, capable of causing harm, which "by their nature, necessarily obstruct, resist, hinder or endanger an officer"); *State v. Tyson*, 86 Conn. App. 607, 616 (2004), cert. denied, 273 Conn. 927 (2005) (interfering with an officer is a lesser included offense in assault on an officer under § 53a-167c (a) (1)).

***Sentence Enhancer***

Effective October 1, 2013, the statute provides for an enhanced sentence if the violation of this offense causes the death or serious physical injury of another person. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4 and the definition of serious physical injury.

## 4.3-2 Failure to Assist a Peace Officer, Special Policeman, Motor Vehicle Inspector, or Firefighter -- § 53a-167b

Revised to December 1, 2007 (modified May 23, 2013)

The defendant is charged [in count \_\_\_\_] with failure to assist a (peace officer / special policeman / motor vehicle inspector / firefighter). The statute defining this offense reads in pertinent part as follows:

a person is guilty of failure to assist a (peace officer / special policeman / motor vehicle inspector / firefighter) when, commanded by a (peace officer / special policeman / inspector / firefighter) authorized to command assistance, such person refuses to assist such (peace officer / special policeman / inspector / firefighter) in the execution of (his/her) duties.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Assistance commanded by officer**

The first element is that the defendant was commanded to assist a *<insert type of officer>*.<sup>1</sup> This element requires that you find that *<insert name of officer making command>* was a *<insert type of officer>* and that (he/she) commanded rather than merely requested assistance.

### **Element 2 - Officer authorized to command assistance**

The second element is that the *<insert name and/or title of officer>* was authorized to command such assistance in the performance of (his/her) duties.

### **Element 3 - Assistance was necessary and reasonable**

The third element is that such assistance was both demonstrably necessary and reasonable under all the circumstances. In evaluating necessity and reasonableness, the following factors should be considered: the urgency of the situation giving rise to a command for assistance; the availability of other trained law enforcement officers, rather than untrained civilians, to come to an officer's aid; the nature of the assistance sought; the appropriateness of commandeering the assistance of these individuals; the provocativeness of the situation in which aid is sought; the presence or threat of the use of weapons; and the risk of injury or death to the officer, to the individual being ordered to assist, and to any other parties present; and the reasonableness of the officer's actions in the underlying situation for which (he/she) sought assistance.<sup>2</sup>

### **Element 4 - Refused to assist**

The fourth element is that the defendant refused to assist the *<insert name and/or title of officer>* in the execution of (his/her) duties as commanded.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was commanded to assist *<insert type of officer>*, 2) the *<insert type of officer>* was authorized to

command such assistance, 3) the assistance was necessary and reasonable under all the circumstances, and 4) the defendant refused to assist the *<insert type of officer>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of failure to assist a (peace officer / special policeman / motor vehicle inspector / firefighter), then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See definitions of peace officer and firefighter in the Glossary. A "special policeman" is appointed by the Commissioner of Emergency Services and Public Protection, pursuant to General Statutes § 29-18b, to act in the special investigation section of the Department of Revenue Services and has all the powers of a state policeman. A "motor vehicle inspector" is appointed by the Commissioner of Motor Vehicles, pursuant to General Statutes § 14-8, and has "the same authority to make arrests or issue citations for violation of any statute or regulation relating to motor vehicles and to enforce said statutes and regulations as policemen or state policemen in their respective jurisdictions." Motor vehicle inspectors were added to this offense by Public Acts 2008, No. 08-150, § 53, effective October 1, 2008.

<sup>2</sup> *State v. Floyd*, 217 Conn. 73, 92-95 (1991) (adding the common-law element of necessity and reasonableness to save the statute from a facial constitutional challenge).

## 4.3-3 Assault of Public Safety, Emergency Medical, Health Care, or Public Transit Personnel -- § 53a-167c

Revised to November 17, 2015

The defendant is charged [in count \_\_\_\_] with assault of (public safety / emergency medical / public transit / health care) personnel. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault of (public safety / emergency medical / public transit / health care) personnel when, with intent to prevent a reasonably identifiable *<insert as appropriate:>*

- peace officer
- special policeman
- motor vehicle inspector
- firefighter
- employee of an emergency medical service organization
- emergency room physician or nurse
- health care employee
- employee of the department of correction
- employee or member of the board of parole
- probation officer
- employee of the judicial branch assigned to provide pretrial secure detention and programming services to juveniles accused of the commission of a delinquent act
- liquor control agent
- state or municipal animal control officer
- security officer
- employee of the department of children and families assigned to provide direct services to children and youth in the care or custody of the department
- employee of a municipal police department assigned to provide security at the police department's lockup and holding facility
- active individual member of a volunteer canine search and rescue team
- public transit employee

from performing (his/her) duties, and while *<insert type of officer or employee>* was acting in the performance of (his/her) duties such person *<insert as appropriate:>*

- **§ 53a-167c (a) (1):** caused physical injury to the *<insert type of officer>*.
- **§ 53a-167c (a) (2):** threw or hurled, or caused to be thrown or hurled, any rock, bottle, can or other article, object or missile of any kind capable of causing physical harm, damage or injury, at *<insert type of officer>*.
- **§ 53a-167c (a) (3):** used or caused to be used any mace, tear gas or any like or similar deleterious agent against *<insert type of officer>*.
- **§ 53a-167c (a) (4):** threw, hurled, or caused to be thrown or hurled, any paint, dye or other like or similar staining, discoloring or coloring agent or any type of offensive or noxious liquid, agent or substance at *<insert type of officer>*.
- **§ 53a-167c (a) (5):** threw or hurled, or caused to be thrown or hurled, any bodily fluid including, but not limited to, urine, feces, blood or saliva at *<insert type of officer>*.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

**Element 1 - Assault of officer**

The first element is that the person allegedly assaulted was a reasonably identifiable *<insert type of officer or employee>*.<sup>1</sup> In addition, this person had to be reasonably identifiable as a *<insert type of officer or employee>*. The standard is whether a reasonable person under the same circumstances should have identified the other person as a *<insert type of officer or employee>*. In determining this, such facts as whether the other person wore a uniform, whether (he/she) identified (himself/herself) or showed (his/her) badge or other identification or the manner in which (he/she) acted and conducted (himself/herself) are all relevant to your decision of whether that person was reasonably identifiable as a *<insert type of officer or employee>*. It is irrelevant whether the *<insert type of officer or employee>* was officially on duty at the time of the attempted arrest, as long as (he/she) was identifiable as a *<insert type of officer or employee>*.<sup>2</sup>

**Element 2 - In the performance of duties**

The second element is that the conduct of the defendant occurred while the *<insert type of officer or employee>* was acting in the performance of (his/her) duties. The phrase "in the performance of (his/her) official duties" means that the *<insert type of officer or employee>* was acting within the scope of what (he/she) is employed to do, and that (his/her) conduct was related to (his/her) official duties. The question of whether (he/she) was acting in good faith in the performance of (his/her) duties is a factual question for you to determine on the basis of the evidence in the case. *<Summarize evidence if appropriate.>*

*<Instruct on the specific duties of the officer or employee according to the evidence presented. If the assault occurred during an arrest<sup>3</sup> or at a correctional institution, see element 2 of Interfering with an Officer, Instruction 4.3-1.>*

**Element 3 - Intent to prevent the performance of duties**

The third element is that the defendant had the specific intent to prevent the *<insert type of officer>* from performing (his/her) lawful duties. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

**Element 4 - By certain means**

The fourth element is that the defendant *<insert as appropriate:>*

- **§ 53a-167c (a) (1):** caused physical injury to the *<insert type of officer>*. "Physical injury" means impairment of physical condition or pain. It is not necessary that the defendant have the intent to cause physical injury.
- **§ 53a-167c (a) (2):** threw or hurled, or caused to be thrown or hurled, any rock, bottle, can or other article, object or missile of any kind capable of causing physical harm, damage or injury, at *<insert type of officer>*.
- **§ 53a-167c (a) (3):** used or caused to be used any mace, tear gas or any like or similar deleterious agent against *<insert type of officer>*.

- § 53a-167c (a) (4): threw, hurled, or caused to be thrown or hurled, any paint, dye or other like or similar staining, discoloring or coloring agent or any type of offensive or noxious liquid, agent or substance at <insert type of officer>.
- § 53a-167c (a) (5): threw or hurled, or caused to be thrown or hurled, any bodily fluid including, but not limited to, urine, feces, blood or saliva at <insert type of officer>.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant assaulted a <insert type of officer>, 2) in the performance of (his/her) duties, 3) with the intent to prevent the performance of (his/her) duties, and 4) by means of <insert means used in assault>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault of a (public safety / emergency medical) personnel, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

<sup>1</sup> See definitions of peace officer, firefighter, employee of an emergency medical service organization, health care employees, and public transit employee in the Glossary. A "special policeman" is appointed by the Commissioner of Emergency Services and Public Protection, pursuant to General Statutes § 29-18b, to act in the special investigation section of the Department of Revenue Services and has all the powers of a state policeman. A "volunteer canine search and rescue team" means an individual and a dog (A) appropriately trained and certified to engage in search and rescue operations by a nonprofit canine search and rescue organization that is a member of the National Association of Search and Rescue, or its successor organization, and (B) who jointly engage in such operations at the request of a police or fire department and provide services without compensation. General Statutes § 5-249 (d). A "motor vehicle inspector" is appointed by the Commissioner of Motor Vehicles, pursuant to General Statutes § 14-8, and has "the same authority to make arrests or issue citations for violation of any statute or regulation relating to motor vehicles and to enforce said statutes and regulations as policemen or state policemen in their respective jurisdictions." Motor vehicle inspectors were added to this offense by Public Acts 2008, No. 08-150, § 54, effective October 1, 2008. "Public transit employees" were added to this offense by Public Acts 2009, No. 09-191, § 2, effective October 1, 2009. "Health care employees" were added to this offense by Public Acts 2011, No. 11-175, § 4, effective October 1, 2011. "Liquor control agents" were added to this offense by Public Acts 2013, No. 111, § 1, effective October 1, 2013. "State or municipal animal control officers" and "security officers" were added by Public Acts 2015, No. 211, § 15, effective October 1, 2015.

<sup>2</sup> See *State v. Woolcock*, 201 Conn. 605, 632 (1986); *State v. Ramirez*, 61 Conn. App. 865, 870-71 and 874-75 n.6, cert. denied, 256 Conn. 903 (2001).

<sup>3</sup> See *State v. Baptiste*, 133 Conn. App. 614, 627-28, appeal dismissed, 310 Conn. 790 (2014) (2012) (reversing conviction because jury was not instructed on this aspect of the performance of a police officer's duties).

### ***Commentary***

See generally *State v. Ramirez*, supra, 61 Conn. App. 873-75; *State v. Jenkins*, 40 Conn. App. 601, 603-08, cert. denied, 237 Conn. 918 (1996); *State v. Dunbar*, 37 Conn. App. 338, 341-44, cert. denied, 233 Conn. 906 (1995).

"If [the officer] is acting under a good faith belief that he is carrying out [his] duty, and if his actions are reasonably designed to that end, he is acting in the performance of his duties. . . . The phrase 'in the performance of his official duties' means that the police officer is simply acting within the scope of what [he] is employed to do. The test is whether the [police officer] is acting within that compass or is engaging in a personal frolic of his own. . . . The question of whether a police officer was acting in good faith in the performance of his duties is a factual question for the jury to determine on the basis of all the circumstances of the case and under appropriate instructions from the court." (Citations omitted; internal quotation marks omitted.) *State v. Torwich*, 38 Conn. App. 306, 315-16, cert. denied, 235 Conn. 905 (1995). See *State v. Casanova*, 255 Conn. 581, 592-97 (2001) (trial court improperly prevented defendant from presenting evidence to jury on element of § 53a-167c: that the officer assaulted by the defendant had not entered defendant's home in good faith performance of his duties).

### ***Attempt***

A person may be found guilty of attempt to assault a police officer if he or she attempts to prevent the officer from performing his or her duties, "regardless of whether one intends the consequence of injury to a police officer." *State v. Jones*, 96 Conn. App. 634, 639, cert. denied, 280 Conn. 919 (2006).

### ***Lesser included offenses***

General Statutes § 53a-167c, assault of public safety, emergency medical or public transit personnel, is not a lesser included offense of assault (§ 53a-59), or assault on a correction officer (§ 53a-59b). Section § 53a-167c (a) (1) requires the intent to prevent a correction officer from performing his duty, whereas § 53a-59 or § 53a-59b requires the intent to cause physical injury to the correction officer. See *State v. Nixon*, 231 Conn. 545, 554 (1995).

Depending on the subsection of § 53a-167c that the defendant is charged with, interfering with an officer (§ 53a-167a) may be a lesser included offense or it may be a separate offense. See *State v. Jay*, 124 Conn. App. 294, 329 (2010), cert. denied, 299 Conn. 927 (2011) (hurling saliva under § 53a-167c (a) (5) is materially different from conduct that causes physical injury or includes hurling a bottle or other object, capable of causing harm, which "by their nature, necessarily obstruct, resist, hinder or endanger an officer"); *State v. Porter*, 76 Conn. App. 477, 485, cert. denied, 264 Conn. 910 (2003) (causing physical injury under § 53a-167c (a) (5) by its nature will also constitute obstructing, hindering, resisting or endangering that officer).

## 4.3-4 Assault of a Prosecutor -- § 53a-167d

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with assault of a prosecutor. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault of a prosecutor when such person, with intent to intimidate or harass, or to retaliate against, another person on account of the performance by such other person of such other person's duties as a prosecutor employed by the Division of Criminal Justice, causes physical injury to such other person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Physical injury**

The first element is that the defendant caused physical injury to another person. "Physical injury" means impairment of physical condition or pain.

### **Element 2 - Prosecutor**

The second element is that the person injured was at some time a prosecutor employed by the Division of Criminal Justice.

### **Element 3 - Intent**

The third element is that the defendant had the intent to (intimidate or harass / retaliate against) the person because of that person's conduct in the performance of the duties as a prosecutor.<sup>1</sup> A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant caused physical injury to <insert name of person injured>, 2) <insert name of person injured> was at some time employed as a prosecutor, and 3) the defendant intended to (intimidate or harass / retaliate against) <insert name of person injured> because of (his/her) performance of the duties of a prosecutor.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault of a prosecutor, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The duties of prosecutorial officials are listed in General Statutes § 51-286a.

## 4.3-5 Interference with a Search -- § 54-33d

New, April 23, 2010 (modified May 23, 2013)

The defendant is charged [in count \_\_\_] with interfering with a search. The statute defining this offense imposes punishment on any person who forcibly assaults, resists, opposes, impedes, intimidates or interferes with any person authorized to serve or execute search warrants or to make searches and seizures while engaged in the performance of (his/her) duties with regard thereto or on account of the performance of such duties.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Interfered with authorized search**

The first element is that the defendant forcibly assaulted, resisted, opposed, impeded, intimidated or interfered with a person authorized to serve or execute search warrants or to make searches and seizures. Certain persons are authorized by statute<sup>1</sup> to serve and execute search warrants and to conduct searches and seizures. Among those authorized are *<insert as appropriate:>*

- any police officer of a regularly organized police department,
- any state police officer,
- an inspector in the Division of Criminal Justice,
- a conservation officer, special conservation officer or patrolman.

You must find that *<insert name of officer>* was *<identify type of officer>*.

The defendant must have forcibly assaulted, forcibly resisted, forcibly opposed, forcibly impeded, forcibly intimidated or forcibly interfered with *<insert name of officer>*.

There are six verbs describing how this offense may be committed. You need only find that the defendant's conduct fits the definition of one of these words, but they are all modified with the word "forcibly." "Forcibly" means actual physical force or violence or superior physical strength against another person. "Assault" means to attack another person, either physically or verbally, causing the other person to fear immediate harm. "Resist" means to oppose actively, to fight, argue or work against. "Oppose" means to be against. "Impede" means to prevent action. "Intimidate" means to make afraid, or to deter with threats or violence. "Interfere" means to prevent or hinder.

### **Element 2 - In the performance of duties**

The second element is that the conduct of the defendant occurred while *<insert name of officer>* was acting in the performance of (his/her) duties or on account of the performance of those duties. This means that the conduct of the officer, which the defendant allegedly interfered with, was within the scope of what (he/she) is employed to do, and was related to *<insert name of officer>*'s official duties in serving and executing the search warrant or conducting the search and seizure. The question of whether (he/she) was acting in good faith within (his/her) official duties is a factual question for you to determine based on the evidence in the case. *<Summarize evidence if appropriate.>*

It does not matter if the search and seizure itself was not legally authorized, as long as the officer had a good faith belief that he was serving and executing a valid search warrant or conducting an authorized search. A person is not permitted to interfere with the service and execution of a search warrant or a search conducted by an authorized person even if the person sincerely believes that the search and seizure is wrongful.<sup>2</sup>

It is necessary, however, that the person being searched knows or should know that the other person is an authorized person.<sup>3</sup>

An authorized person serving and executing a search warrant or conducting a search and seizure is justified in using physical force, but only so much as (he/she) reasonably believes is necessary to serve and execute the warrant or conduct the search. If you find that any force used by the <insert name of officer> was more than <insert name of officer> reasonably believed was necessary, then (his/her) conduct was outside the scope of what (he/she) was authorized to do.

So to find that the officer was acting in or on account of the performance of (his/her) duties, you must find that <insert name of person searched> knew or should have known that <insert name of officer> was authorized to serve and execute the search warrant or to conduct the search, that <insert name of officer> was acting in good faith as an officer serving and executing the warrant or conducting the search, and that (he/she) used no more physical force than was reasonably necessary to carry out (his/her) duties.

### **Element 3 - Intent to interfere**

The third element is that the defendant acted with the specific intent to interfere with the officer in the service and execution of the warrant or the conduct of the search and seizure.<sup>3</sup> A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant forcibly assaulted, forcibly resisted, forcibly opposed, forcibly impeded, forcibly intimidated or forcibly interfered with <insert name of officer>, 2) while <insert name of officer> was serving and executing a search warrant or conducting a search and seizure within the scope of (his/her) official duties, and 3) the defendant specifically intended to interfere with <insert name of officer>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of interfering with a search, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 54-33a (c) (search warrants); § 51-286 (b) (chief inspectors); § 26-6 (b) (conservation officers, special conservation officers and patrolmen).

<sup>2</sup> *State v. Browne*, 291 Conn. 720, 741 n.16 (2009).

<sup>3</sup> *State v. Woolcock*, 201 Conn. 605, 628-32 (1986); *State v. Ramirez*, 61 Conn. App. 865, 874 (2001).

***Commentary***

A person does not have the right to an attorney before the execution of a search warrant. *United States v. Bullock*, 73 Fed. 3d 171, 173 (5th Cir. 1995).

## **4.4 FAILURE TO APPEAR**

**4.4-1 Failure to Appear (While Released on Bail or a Promise to Appear) -- § 53a-172 (a) (1) and § 53a-173 (a) (1)**

**4.4-2 Failure to Appear (While on Probation) -- § 53a-172 (a) (2) and § 53a-173 (a) (2)**

## 4.4-1 Failure to Appear (While Released on Bail or a Promise to Appear) -- § 53a-172 (a) (1) and § 53a-173 (a) (1)

Revised to December 1, 2007

**Note:** The degree of the offense depends on the classification of the underlying crime. See § 53a-172 (first degree: felony); § 53a-173 (second degree: misdemeanor or motor vehicle violation which a sentence of a term of imprisonment may be imposed).

The defendant is charged [in count \_\_\_\_] with failure to appear in the (first/second) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of failure to appear in the (first / second) degree when while charged with the commission of a (felony / misdemeanor / motor vehicle violation which a sentence to a term of imprisonment may be imposed) and while out on bail or released under other procedure of law, (he/she) wilfully fails to appear when legally called according to the terms of (his/her) bail bond or promise to appear.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Released on bail or promise to appear**

The first element is that the defendant was released on (bail / a promise to appear) upon the condition that (he/she) appear personally in connection with (his/her) criminal proceeding at a later date. The statute requires that the crime with which the defendant was charged when (he/she) was released must be a (felony / misdemeanor / motor vehicle violation for which a sentence of a term of imprisonment may be imposed). I instruct you, as a matter of law, that *<insert underlying charge>* is a (felony / misdemeanor / motor vehicle violation which a sentence of a term of imprisonment may be imposed).

### **Element 2 - Duty to appear**

The second element is that on *<insert date>*, the defendant was required to appear before (a court / judicial officer) in connection with the charge of *<insert underlying charge>*.

### **Element 3 - Failure to appear**

The third element is that the defendant wilfully failed to appear as required. An act is done wilfully if done knowingly, intentionally, and deliberately. In order to prove this element, the state must prove beyond a reasonable doubt either that the defendant received and knowingly, intentionally, and deliberately ignored a notice to appear or that the defendant knowingly, intentionally, and deliberately embarked on a course of conduct designed to prevent (him/her) from receiving such notice.<sup>1</sup> *<See Knowledge, Instruction 2.3-3.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was released on (bail / a promise to appear) on the condition that (he/she) appear personally in connection

with (his/her) criminal proceeding at a later date, 2) (he/she) was required to appear in court on <insert date>, and 3) (he/she) wilfully failed to appear on that date.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of failure to appear, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Cerilli*, 222 Conn. 556, 583-84 (1992)

### *Commentary*

#### *Multiple charges*

"[C]onduct resulting in the forfeiture of multiple bonds, even conduct consisting of a single act of failing to appear, furnishes a basis for finding multiple violations of § 53a-172." *State v. Garvin*, 242 Conn. 296, 305 (1997) (discussing the purpose of the statute as protecting the integrity of the bail bond system). Note that the subsection concerning failure to appear while on probation was added in 1998.

See *State v. Khadijah*, 98 Conn. App. 409 (2006), appeal dismissed, 284 Conn. 429 (2007) (failure to appear was not wilful).

## 4.4-2 Failure to Appear (While on Probation) -- § 53a-172 (a) (2) and § 53a-173 (a) (2)

Revised to December 1, 2007 (modified May 20, 2011)

**Note:** The degree of the offense depends on the classification of the underlying crime. See § 53a-172 (first degree: felony); § 53a-173 (second degree: misdemeanor or motor vehicle violation which a sentence of a term of imprisonment may be imposed).

The defendant is charged [in count \_\_\_\_] with failure to appear in the (first/second) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of failure to appear in the (first / second) degree when while on probation for conviction of a (felony / misdemeanor / motor vehicle violation), (he/she) wilfully fails to appear when legally called for any court hearing relating to a violation of probation hearing.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - On probation**

The first element is that the defendant was on probation for a conviction of a (felony / misdemeanor / motor vehicle violation). I instruct you, as a matter of law, that the crime of <insert underlying charge> is a (felony / misdemeanor / motor vehicle violation).

### **Element 2 - Duty to appear**

The second element is that on <insert date>, the defendant was required to appear before (a court or judicial officer) in connection with the charge of violation of probation.

### **Element 3 - Failure to appear**

The third element is that the defendant wilfully failed to appear as required. An act is done wilfully if done knowingly, intentionally, and deliberately. In order to prove this element, the state must prove beyond a reasonable doubt either that the defendant received and knowingly, intentionally, and deliberately ignored a notice to appear or that the defendant knowingly, intentionally, and deliberately embarked on a course of conduct designed to prevent (him/her) from receiving such notice.<sup>1</sup> <See Knowledge, Instruction 2.3-3.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was on probation for a conviction of a (felony / misdemeanor / motor vehicle violation), 2) (he/she) was required to appear on <insert date> in connection with the charge of violation of probation, and 3) (he/she) wilfully failed to appear.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of failure to appear, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Cerilli*, 222 Conn. 556, 583-84 (1992).

## **4.5 INTERFERENCE WITH COURT PROCEEDINGS**

- 4.5-1 Bribery of a Witness -- § 53a-149**
- 4.5-2 Bribe Receiving by a Witness -- § 53a-150**
- 4.5-3 Tampering with a Witness -- § 53a-151**
- 4.5-4 Intimidating a Witness -- § 53a-151a**
- 4.5-5 Bribery of a Juror -- § 53a-152**
- 4.5-6 Bribe Receiving by a Juror -- § 53a-153**
- 4.5-7 Tampering with a Juror -- § 53a-154**
- 4.5-8 Tampering with or Fabricating Physical Evidence -- § 53a-155**
- 4.5-9 Perjury -- § 53a-156**
- 4.5-10 Hindering Prosecution in the First Degree -- § 53a-165 and § 53a-165aa**
- 4.5-11 Hindering Prosecution in the Second or Third Degree -- § 53a-165, § 53a-166, and § 53a-167**

## 4.5-1 Bribery of a Witness -- § 53a-149

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with bribery of a witness. The statute defining this offense reads in pertinent part as follows:

a person is guilty of bribery of a witness if (he/she) (offers / confers / agrees to confer) upon a witness any benefit to influence the testimony or conduct of such witness in, or in relation to, an official proceeding.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Witness in an official proceeding**

The first element is that <insert name of bribery target> was a witness in an official proceeding. A "witness" is any person summoned, or who may be summoned, to give testimony in an official proceeding. An "official proceeding" is any proceeding held or that may be held before any legislative, judicial, administrative or other agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner or notary or other person taking evidence in connection with any proceeding. In this case, the state alleges that <insert name of bribery target> was to be a witness in <insert type of proceeding>.

### **Element 2 - Benefit offered**

The second element is that the defendant (offered / conferred / agreed to confer) upon a witness any benefit. "Benefit" means monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including a benefit to any person or entity in whose welfare the beneficiary is interested. It makes no difference that such a witness does not accept the benefit. The crime is committed if the defendant merely makes the offer to confer such a benefit, or even if (he/she) merely agrees to confer such benefit. In this case, the state alleges that the benefit was <insert alleged benefit>.

### **Element 3 - Intent to influence**

The third element is that the (offering / conferring / agreeing to confer) a benefit was made with the specific intent to influence the testimony or the conduct of a witness in relation to the official proceedings in issue. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) <insert name of bribery target> was a witness in an official proceeding, 2) the defendant (offered / conferred / agreed to confer) upon (him/her) a benefit, specifically <insert alleged benefit>, and 3) the defendant intended that the benefit would influence the testimony or conduct of <insert name of bribery target> in the official proceeding.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of bribery of a witness, then you shall find the defendant guilty. On the other hand,

if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 4.5-2 Bribe Receiving by a Witness -- § 53a-150

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with bribe receiving by a witness. The statute defining this offense reads in pertinent part as follows:

a witness is guilty of bribe receiving by a witness if (he/she) (solicits / accepts / agrees to accept) any benefit from another person upon an agreement or understanding that such benefit will influence (his/her) testimony or conduct in, or in relation to, any official proceeding.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Witness in an official proceeding**

The first element is that the defendant was a witness in an official proceeding. A "witness" is any person summoned, or who may be summoned, to give testimony in an official proceeding. An "official proceeding" is any proceeding held or that may be held before any legislative, judicial, administrative or other agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner or notary or other person taking evidence in connection with any proceeding. In this case, the state alleges that the defendant was to be a witness in *<insert type of proceeding>*.

### **Element 2 - Sought benefit**

The second element is that the defendant (solicited / accepted / agreed to accept) any benefit from *<insert name of third party>*. "Benefit" means monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including benefit to any person or entity in whose welfare the beneficiary is interested. It is not necessary for the defendant to actually receive the benefit; mere solicitation or agreement to accept such benefit for the purpose of influencing (his/her) testimony is sufficient. In this case the state alleges that the benefit was *<insert alleged benefit>*.

### **Element 3 - Intent to influence**

The third element is that the defendant (solicited / accepted / agreed to accept) *<insert alleged benefit>* upon an agreement or understanding and with the specific intent that such benefit would influence (his/her) testimony or conduct in relation to the official proceeding. The defendant and *<insert name of third party>* must have both understood that the defendant's testimony would be influenced by (his/her) acceptance of the *<insert alleged benefit>*.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was a witness in an official proceeding, 2) the defendant sought *<insert alleged benefit>* from *<insert name of third party>*, and 3) the defendant and *<insert name of third party>* intended that the benefit would influence the defendant's testimony or conduct.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of bribe receiving by a witness, then you shall find the defendant guilty. On the

other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 4.5-3 Tampering with a Witness -- § 53a-151

Revised to December 1, 2007 (modified November 6, 2014)

The defendant is charged [in count \_\_\_\_] with tampering with a witness. The statute defining this offense reads in pertinent part as follows:

a person is guilty of tampering with a witness if, believing that an official proceeding is pending or about to be instituted, (he/she) induces or attempts to induce a witness to (testify falsely / withhold testimony / elude legal process summoning (him/her) to testify / absent (himself/herself) from any official proceeding).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Witness in an official proceeding**

The first element is that the defendant believed that an official proceeding was pending or about to be instituted<sup>1</sup> and that *<insert name of witness>* was likely to be a witness. An "official proceeding" is any proceeding held or that may be held, before any legislative, judicial, administrative or other agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner or notary or other person taking evidence in connection with any proceeding. A "witness" is any person summoned or who may be summoned to give testimony in an official proceeding. In this case, the state alleges that *<insert name of witness>* was a witness who was to appear before *<insert type of proceeding>*.

### **Element 2 - Influence**

The second element is that the defendant induced or attempted to induce a witness to (testify falsely / to withhold testimony / to elude legal process summoning the witness to testify / to absent (himself/herself) from an official proceeding).

It is immaterial whether the defendant was successful in producing the result (he/she) intended. It is sufficient if the defendant specifically intended by (his/her) conduct to cause a particular witness to testify falsely or to refrain from testifying at all. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant believed that *<insert name of witness>* was to be a witness before *<insert type of proceeding>*, and 2) the defendant induced or attempted to induce *<insert name of witness>* to *<insert specific allegations>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of tampering with a witness, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The requirement that the defendant believe that an official proceeding is "about to be instituted" is satisfied "if a defendant, knowing he has been implicated as a participant in a crime, threatens a likely witness to that crime, to withhold evidence from the police." *State v. Pommer*, 110 Conn. App. 608, 618, cert. denied, 289 Conn. 951 (2008). "[I]t does not matter whether the police are at the investigation stage, the official proceedings stage, or any other stage; as long as the defendant acts with the intent to prevent a witness from testifying at an official proceeding." *State v. Ortiz*, 312 Conn. 551, 571 (2014) (defendant tried to prevent witness from giving statement to police).

### ***Commentary***

In rejecting the defendant's argument that the statute was unconstitutionally vague, the Supreme Court, in *State v. Cavallo*, 200 Conn. 664, 669 (1986), stated that "[t]he legislature's choice of the verb 'induce' connotes a volitional component of the crime of tampering . . . [T]he statute focuses on the mental state of the perpetrator." "[A] defendant is guilty of tampering with a witness only if he intends that his conduct directly cause a particular witness to testify falsely or to refrain from testifying at all. . . . As long as intent is a necessary element of the crime under § 53a-151, which penalizes only verbal acts relating to a specific pending prosecution, the statute casts no chilling effect on general exhortations concerning cooperation with judicial proceedings." *Id.*, 672. See also *State v. Coleman*, 83 Conn. App. 672, 690-91, cert. denied, 271 Conn. 910 (2004), cert. denied, 544 U.S. 1050, 125 S.Ct. 2290, 161 L.Ed.2d 1091 (2005) (the court's instruction accurately conveyed the element of intent to affect the testimony of a witness); *State v. Higgins*, 74 Conn. App. 473, 487-89, cert. denied, 262 Conn. 950 (2003) (calling victim and instructing her to tell the police that "nothing ever happened" clearly comes within the meaning of "induce").

In *State v. Jimenez*, 74 Conn. App. 195, cert. denied, 267 Conn. 947 (2002), the defendant was charged with sexual assault, kidnapping, risk of injury to a minor, accessory to tampering with a witness, and hindering prosecution. The court charged the jury that it could use the evidence presented on the hindering prosecution and tampering with a witness as consciousness of guilt evidence on the other three charges.

## 4.5-4 Intimidating a Witness -- § 53a-151a

Revised to April 23, 2010

The defendant is charged [in count \_\_\_\_] with intimidating a witness. The statute defining this offense reads in pertinent part as follows:

a person is guilty of intimidating a witness when, believing that an official proceeding is pending or about to be instituted, such person (uses / attempts to use / threatens the use of) physical force against (a witness / another person) with intent to *<insert appropriate subsection:>*

- **§ 53a-151a (a) (1):** (influence / delay / prevent) the testimony of a witness in the official proceeding.
- **§ 53a-151a (a) (2):** induce the witness to (testify falsely / withhold testimony / elude legal process summoning the witness to testify / absent (himself / herself) from the official proceeding).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Official proceeding**

The first element is that the defendant believed that there was an official proceeding pending or about to be instituted. An "official proceeding" is any proceeding held or which may be held before any legislature, judicial, administrative, or other agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, or notary, or other person taking evidence in connection with any proceeding.

### **Element 2 - Physical force**

The second element is that the defendant (used / attempted to use / threatened the use of) physical force against (a witness / another person). *<Insert appropriate definition:>*

- "Witness" is any person summoned, or who may be summoned to give testimony in an official proceeding.
- "Person" is defined as a human being and where appropriate, a public or private corporation, a limited liability company, or unincorporated association, a partnership, a government or governmental instrumentality.

*<Instruct as appropriate according to the type of force alleged:>*

- **Use of force**

"Use of force" means use of a dangerous instrument, or use of actual physical force, or violence, or superior physical strength against the witness or another person.

["Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and

even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.] It is not necessary for the state to prove that the defendant was armed with or used any weapon for you to find that the defendant used force.

- **Threatened use of force**

You may find a threat of use of force because you find that a threat was actually expressed, or you may find a threat implied from the circumstances and from what you find to have been the defendant's conduct. Any such threat must have been such that it reasonably caused the person to fear physical injury to (herself/himself). "Physical injury" means impairment of physical condition or pain. Whether the fear of physical injury was reasonable is a question of fact for you to determine from the circumstance that you find existed at the time. [For example, any injury inflicted, relative sizes, place of occurrence, etc.]

[In this case, the state has charged that the defendant both used force and threatened the use of force. These are two methods by which compulsion may be demonstrated and proven. The element will be established as long as each of you finds proven beyond a reasonable doubt that the defendant either used force or threatened the use of force against the person. Simply put, it is not necessary for the state to prove that the defendant both used force and threatened the use of force, as long as each one of you is satisfied that (he/she) either used force or threatened the use of force.]

### **Element 3 - Intent**

The third element is that the use, attempt to use or threat to use physical force was with the intent to *<insert as appropriate:>*

- (influence / delay / prevent) the testimony of a witness in the official proceeding.
- induce the witness to (testify falsely / withhold testimony / elude legal process summoning the witness to testify / absent (himself / herself) from the official proceeding). *<The term "legal process summoning the witness to testify" should to be tailored to the specific facts of the case.>*

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

"Influence," "delay," and "prevent" have their ordinary meanings. "Induce" means to move to action by persuasion or by influence.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant believed that an official proceeding was pending or about to be initiated, 2) the defendant (used / attempted to use / threatened to use) physical force against (a witness / another person), and 3) by such conduct the defendant intended to *<insert specific allegations against defendant>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of intimidating a witness, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 4.5-5 Bribery of a Juror -- § 53a-152

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with bribery of a juror. The statute defining this offense reads in pertinent part as follows:

a person is guilty of bribery of a juror if (he/she) (offers / confers / agrees to confer) upon a juror any benefit as consideration for the juror's decision or vote.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Benefit offered**

The first element is that the defendant (offered / conferred / agreed to confer) a benefit upon <insert name of target of bribe>. "Benefit" means monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including a benefit to any person or entity in whose welfare the beneficiary is interested.

### **Element 2 - To juror**

The second element is that at the time the benefit was (offered / conferred / agreed to be conferred), <insert name of target of bribe> was then a juror. A "juror" is any person who has been drawn or summoned to serve or act as a juror in any court. In this case the state alleges that the benefit involves <insert alleged benefit>.

### **Element 3 - As consideration for vote**

The third element is that the benefit was consideration for the juror's decision or vote. This means that the defendant must have specifically intended that the benefit offered was in exchange for the juror's decision or vote. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (offered / conferred / agreed to confer) a benefit upon <insert name of target of bribe>, 2) <insert name of target of bribe> was then a juror, and 3) the defendant and <insert name of target of bribe> both intended that the benefit would influence the juror's decision or vote.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of bribery of a juror, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 4.5-6 Bribe Receiving by a Juror -- § 53a-153

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with bribe receiving by a juror. The statute defining this offense reads in pertinent part as follows:

a juror is guilty of bribe receiving by a juror if (he/she) (solicits / accepts / agrees to accept) from another person any benefit as consideration for (his/her) decision or vote.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Benefit sought**

The first element is that the defendant (solicited / accepted / agreed to accept) a benefit from <insert name of third party>. "Benefit" means monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including any benefit to any person or entity in whose welfare the beneficiary is interested. The mere act of soliciting a benefit is sufficient. In this case the state alleges that the benefit involves <insert alleged benefit>.

### **Element 2 - By juror**

The second element is that the defendant was a juror on the date of the offense. A "juror" is any person who has been drawn or summoned to serve or act as a juror in any court.

### **Element 3 - As consideration for vote**

The third element is that the benefit was consideration for the juror's vote or decision. The defendant and <insert name of third party> must have both understood that the juror's decision or vote would be influenced by (his/her) acceptance of the <insert alleged benefit>.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (solicited / accepted / agreed to accept) a benefit from <insert name of third party>, 2) the defendant was a juror, and 3) the defendant and <insert name of third party> both intended that the benefit would influence the juror's decision or vote.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of bribe receiving by a juror, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 4.5-7 Tampering with a Juror -- § 53a-154

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with tampering with a juror. The statute defining this offense reads in pertinent part as follows:

a person is guilty of tampering with a juror if (he/she) influences any juror in relation to any official proceeding to or for which such juror has been drawn, summoned or sworn.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Communication**

The first element is that the defendant communicated with *<insert name of juror>*.

### **Element 2 - With juror**

The second element is that, at the time of the communication, *<insert name of juror>* was then a juror. A "juror" is any person who has been drawn or summoned to serve or act as a juror in any court.

### **Element 3 - Intent to influence**

The third element is that the defendant's communication influenced the juror in relation to the proceeding<sup>1</sup> in which *<insert name of juror>* was a juror.

### **Element 4 - Unauthorized communication**

The fourth element is that the communication by the defendant with the juror was not authorized by law.<sup>2</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant communicated with *<insert name of juror>*, 2) *<insert name of juror>* was a juror at the time of the communication, 3) the defendant influenced *<insert name of juror>* in relation to the proceeding which (he/she) was a juror, and 4) the communication was not authorized by law.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of tampering with a juror, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-146 (1). The statutory definition of "official proceeding" includes many proceedings that would not be heard by a jury, so reading the entire definition is not necessary.

<sup>2</sup> This element, while not derived from the statutory language, is inserted to distinguish criminal conduct from conduct that might be constitutionally protected.

## 4.5-8 Tampering with or Fabricating Physical Evidence -- § 53a-155

Revised to November 17, 2015

The defendant is charged [in count \_\_\_\_] with tampering with or fabricating physical evidence. The statute defining this offense reads in pertinent part as follows:

a person is guilty of tampering with or fabricating physical evidence if, believing that (a criminal investigation conducted by a law enforcement agency / an official proceeding) is pending, or about to be instituted, (he/she) *<insert as appropriate:>*

- § 53a-155 (a) (1): (alters / destroys / conceals / removes) any (record / document / thing) with purpose to impair its verity or availability in such (criminal investigation / official proceeding).
- § 53a-155 (a) (2): (makes / presents / uses) any (record / document / thing) knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such (criminal investigation / official proceeding).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Criminal investigation or official proceeding**

The first element is that the defendant believed that (a criminal investigation conducted by a law enforcement agency / an official proceeding) was pending or about to be instituted. It does not matter whether the (investigation / proceeding) was actually pending or not, as long as the defendant believed that it was. An "official proceeding" is any proceeding held or that may be held before any legislative, judicial, administrative, or other agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner or notary or other person taking evidence in connection with any proceeding.

### **Element 2 - Tampering / fabricating physical evidence**

The second element is that the defendant (tampered with / fabricated) physical evidence. "Physical evidence" means any article, object, document, record or other item of physical substance that is or is about to be produced or used as evidence in an official proceeding.

### **Element 3 - Intent to deceive**

The third element is that the defendant *<insert as appropriate:>*

- (altered / destroyed / concealed / removed) any (record / document / item) with the purpose of impairing its verity or availability in such proceeding.
- (made / presented / used) any (record / document / item) knowing it to be false and with the purpose of misleading a public servant holding the (investigation / proceeding).

The defendant must have acted with the specific purpose or intent of (impairing the verity or availability of the evidence / misleading and deceiving the public servant holding the official proceeding). A person acts with intent when (his/her) conscious objective is to cause such result.

## 4.5-9 Perjury -- § 53a-156

Revised to May 20, 2010

The defendant is charged [in count \_\_\_\_] with perjury. The statute defining this offense reads in pertinent part as follows:

a person is guilty of perjury if, in any official proceeding, (he/she) intentionally, (under oath / in an unsworn foreign declaration), (makes a false statement / swears, affirms or testifies falsely), to a material statement which (he/she) does not believe to be true.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Testimony at an official proceeding**

The first element is that the testimony was given at an official proceeding (under oath / in an unsworn foreign declaration).<sup>1</sup>

An "official proceeding" is any proceeding held or that may be held before any legislative, judicial, administrative or other agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner or notary or other person taking evidence in connection with any proceeding. The defendant must have, in the presence of an officer authorized to administer an oath, unequivocally taken upon (himself/herself) the obligation of an oath.

### **Element 2 - Intentionally made false statement**

The second element is that the defendant intentionally (made a false statement / swore, affirmed, or testified falsely) knowing or believing the statement to be false. The testimony must have been intentionally and deliberately given falsely and not through inadvertence or by mistake; that is, it was the defendant's specific intent to deceive, and the defendant made the statements knowing or believing that they were false.

*<See Intent: Specific, Instruction 2.3-1, and Knowledge, Instruction 2.3-3.>*

The state must prove that the defendant made a statement that was untrue in fact and that the defendant believed that it was false.<sup>2</sup>

The truth or falsity of the defendant's testimony cannot be proved solely on the basis of the uncorroborated testimony of a single witness, even if you find that witness's testimony credible. Rather, it requires corroborated proof through independent and material facts and circumstances supplementing the testimony of the single witness. The corroborative testimony must be of such a character that, when taken in connection with all the other testimony, the falsity of the testimony is established beyond a reasonable doubt.

### **Element 3 - Material to the proceedings**

The third element is that the statement made by the defendant was a statement material to the proceedings. The test of materiality is whether the false testimony was capable of influencing or had the potential to influence the fact finder in deciding the issues.<sup>3</sup>

### **[Affirmative Defense<sup>4</sup>**

The statute defining this offense also defines an affirmative defense, which the defendant has raised. <See *Affirmative Defense, Instruction 2.9-1.*>

The defendant claims that (he/she) was coerced into giving the false testimony. Coercion has two elements. <Insert the elements from *Coercion, Instruction 6.12-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant gave testimony at an official proceeding (under oath / in an unsworn foreign declaration), 2) the defendant intentionally gave false testimony, and 3) the statement was material to the proceedings.

[<If defendant has not raised the affirmative defense:>

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of perjury, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.]

[<If defendant has raised the affirmative defense:>

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of perjury, you shall then find the defendant not guilty and not consider the defendant's affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved (his/her) defense by a preponderance of the evidence, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.]

---

<sup>1</sup> The Uniform Unsworn Foreign Declarations Act was adopted by P.A. No. 10-33, effective October 1, 2010. It applies to declarations made by person while physically located outside of the United States. See General Statutes §§ 1-65aa through 1-65hh for the requirements that must be met to qualify as an unsworn foreign declaration.

<sup>2</sup> It may be inferred from proof of the falsity of the statement, that the defendant knew the statement was false. *State v. Kimber*, 48 Conn. App. 234, 243, cert. denied, 245 Conn. 902 (1998); *State v. Fantasia*, 5 Conn. App. 552 (1985), cert. denied, 199 Conn. 806 (1986).

<sup>3</sup> The materiality of the statement, as an element of perjury, is a question for the jury. *United States v. Gaudin*, 515 U.S. 506, 522-23, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995) (repudiating prior case law that held it was a pure question of law for the court); see also *State v. Paige*, 304 Conn. 426, 446 (2012).

<sup>4</sup> The affirmative defense was added by P.A. No. 10-180, § 7, which became effective on June 8, 2010.

#### *Commentary*

On the "one-witness-plus-corroboration" rule, see *State v. Iassogna*, 95 Conn. App. 780, 787-92 (2006); *State v. Meehan*, 260 Conn. 372, 386-88 (2002); *State v. Sanchez*, 204 Conn. 472 (1987). A conviction cannot rest solely "on the basis of [a witness's] in-court testimony corroborated by her out-of-court written statement." *State v. Iassogna*, supra, 95 Conn. App. 791. The corroborative evidence "must tend to show the perjury independently of the testimony which it is intended to corroborate." *State v. Sanchez*, supra, 204 Conn. 482.

A defendant may be convicted of multiple counts of perjury arising from testimony regarding the same general subject "when each false sworn statement requires its own proof of falsity involving facts unique to that particular statement." *State v. Servello*, 80 Conn. App. 313, 326 (2003), cert. denied, 267 Conn. 914 (2004).

A statement that is literally true, though unresponsive and misleading, is not punishable as perjury. *Bronston v. United States*, 409 U.S. 352, 360, 93 S.Ct. 595, 34 L.Ed.2d 568 (1973) ("[t]he burden is on the questioner to pin the witness down to the specific object of the questioner's inquiry").

## 4.5-10 Hindering Prosecution in the First Degree -- § 53a-165 and § 53a-165aa

Revised to December 1, 2007

**Note:** General Statutes § 53a-165 defines the offense of hindering prosecution. The degree of the offense depends on the classification of the underlying crime. First degree, as defined in § 53a-165aa, has the same underlying crime requirement as second degree, with the additional element of the intent to intimidate or coerce the civilian population or a unit of government.

The defendant is charged [in count \_\_\_\_] with hindering prosecution in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of hindering prosecution in the first degree when such person renders criminal assistance to another person who has committed a class A or B felony or an unclassified felony for which the maximum penalty is imprisonment for more than ten years and such person committed such felony with intent to intimidate or coerce the civilian population or a unit of government.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Criminal assistance**

The first element is that the defendant rendered criminal assistance. A person "renders criminal assistance"<sup>1</sup> when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom (he/she) knows or believes has committed a felony or is being sought by law enforcement officials for the commission of a felony, or with intent to assist a person in profiting or benefiting from the commission of a felony, (he/she) <insert as appropriate:>

- harbors or conceals such person. To "harbor" means to provide a place of protection to.
- warns such person of impending discovery or apprehension.
- provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension.
- prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against (him/her).
- suppresses, by an act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against (him/her).
- aids such person to protect or expeditiously profit from an advantage derived from such crime.

### **Element 2- Third party felony**

The second element is that (he/she) rendered criminal assistance to a person who committed a class A or class B felony or an unclassified felony for which the maximum penalty is imprisonment for more than ten years.

According to the law, <insert crime> is a <insert classification of crime>. The elements of <insert crime> are as follows: <See instruction on crime>.

Please bear in mind, however, that although the person to whom the defendant rendered assistance must have actually committed <insert crime>, (he/she) need not have been arrested, prosecuted, or convicted of the offense.

### **Element 3 - Third party intent**

The third element is that such other person committed the <insert crime> with the specific intent to coerce the civilian population or a unit of government. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

"Coerce" means to compel or induce another to engage in conduct which such other person has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which such other person has a legal right to engage, by means of instilling in such other person a fear if the demand is not complied with.

"Civilian population" has its ordinary meaning, and you are to use that meaning. "Unit of government" means any unit of any branch, subdivision or agency of the state, or any locality within it.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant rendered criminal assistance to <insert name of third party>, 2) <insert name of third party> committed <insert crime allegedly committed by third party> and 3) <insert name of third party> intended to coerce the civilian population or a unit of government.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of hindering prosecution in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-165.

### **Commentary**

It is error to instruct the jury as a fact that the underlying crime was committed. The state must prove that the person to whom assistance was rendered actually committed the crime, either through a certificate of conviction or through independent evidence. *State v. Rodriguez*, 7 Conn. App. 470, 472 (1986).

## 4.5-11 Hindering Prosecution in the Second or Third Degree -- § 53a-165, § 53a-166, and § 53a-167

Revised to December 1, 2007

**Note:** General Statutes § 53a-165 defines the offense of hindering prosecution. The degree of the offense depends on the classification of the underlying crime. See § 53a-166 (second degree: class A or B felony or an unclassified felony for which maximum penalty is imprisonment for more than 10 years); § 53a-167 (third degree: class C or D felony or an unclassified felony for which maximum penalty of imprisonment is less than 10 years but more than one year).

The defendant is charged [in count \_\_\_\_] with hindering prosecution in the (second / third) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of hindering prosecution in the (second / third) degree when such person renders criminal assistance to another person who has committed *<select appropriate degree:>*

- **Second degree:** a class A or class B felony or an unclassified felony for which the maximum penalty is imprisonment for more than ten years.
- **Third degree:** a class C or class D felony or an unclassified felony for which the maximum penalty is imprisonment for ten years or less but more than one year.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Criminal assistance**

The first element is that the defendant rendered criminal assistance. A person "renders criminal assistance"<sup>1</sup> when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom (he/she) knows or believes has committed a felony or is being sought by law enforcement officials for the commission of a felony, or with intent to assist a person in profiting or benefiting from the commission of a felony, (he/she) *<insert as appropriate:>*

- harbors or conceals such person. To "harbor" means to provide a place of protection to.
- warns such person of impending discovery or apprehension.
- provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension.
- prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against (him/her).
- suppresses, by an act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against (him/her).
- aids such person to protect or expeditiously profit from an advantage derived from such crime.

**Element 2- Third party felony**

The second element is that (he/she) rendered criminal assistance to a person who committed <insert as appropriate:>

- a class A or class B felony or an unclassified felony for which the maximum penalty is imprisonment for more than ten years.
- a class C or class D felony or an unclassified felony for which the maximum penalty is imprisonment for ten years or less but more than one year.

According to the law, <insert offense> is a <insert classification of offense>. The elements of <insert crime> are as follows: <see instruction on offense>.

Please bear in mind, however, that although the person to whom the defendant rendered assistance must have actually committed <insert offense>, (he/she) need not have been arrested, prosecuted, or convicted of the offense.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant rendered criminal assistance to <insert name of third party>, and 2) <insert name of third party> committed <insert offense allegedly committed by third party>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of hindering prosecution in the (second / third) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-165.

**Commentary**

It is error to instruct the jury as a fact that the underlying crime was committed. The state must prove that the person to whom assistance was rendered actually committed the crime, either through a certificate of conviction or through independent evidence. *State v. Rodriguez*, 7 Conn. App. 470, 472 (1986).

## **4.6 CRIMES INVOLVING CORRECTIONAL INSTITUTES AND PRISONERS**

- 4.6-1 Unauthorized Conveyance of Items into Correctional or Humane Institution or to Inmate -- § 53a-174 (a)**
- 4.6-2 Possession of Weapon or Dangerous Instrument in a Correctional Institution -- § 53a-174a**
- 4.6-3 Rioting at a Correctional Institution -- § 53a-179b**
- 4.6-4 Inciting to Riot at a Correctional Institution -- § 53a-179c**
- 4.6-5 Escape in the First Degree -- § 53a-169**
- 4.6-6 Escape in the Second Degree -- § 53a-170**
- 4.6-7 Escape from Custody -- § 53a-171 (a) (1)**
- 4.6-8 Escape from Custody -- § 53a-171 (a) (2)**

## 4.6-1 Unauthorized Conveyance of Items into Correctional or Humane Institution or to Inmate -- § 53a-174 (a)

Revised to April 23, 2010

The defendant is charged [in count \_\_\_\_] with unauthorized conveyance of items into a (correctional / humane) institution or to an inmate. The statute defining this offense reads in pertinent part as follows:

any person not authorized by law who conveys or passes, or causes to be conveyed or passed, into any (correctional / humane) institution or the grounds or buildings thereof, or to any inmate of such an institution who is outside the premises thereof and known to the person so conveying or passing or causing such conveying or passing to be such an inmate any (controlled drug / intoxicating liquors / firearm / weapon / dangerous instrument / explosive / United States currency / rope, ladder, or other instrument or device for use in making, attempting or aiding an escape) shall be guilty.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Without authorization**

The first element is that the defendant was not authorized by law to do any of the acts enumerated in the statute.

### **Element 2 - Conveyed unauthorized items into institution**

The second element is that the defendant conveyed the following unauthorized item[s] into *<insert name of facility>*.

*<Insert one or more of the following:>*

- any controlled drug. "Controlled drugs" are defined by statute as those drugs which contain any quantity of a substance which has been designated as subject to the Federal Controlled Substances Act, or which has been designated as a depressant or stimulant drug pursuant to federal food and drug laws, or which has been designated by the Commissioner of Consumer Protection as having a stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and as having a tendency to promote abuse or psychological or physiological dependence, or both. Such controlled drugs are classifiable as amphetamine-type, barbiturate type, cannabis-type, cocaine-type, hallucinogenic, morphine-type and other stimulant and depressant drugs. Specifically excluded from controlled drugs and controlled substances are alcohol, nicotine and caffeine.
- any intoxicating liquors.
- any (firearm / weapon / dangerous instrument / explosive) of any kind. *<Insert appropriate definition:>*

- "Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver, or other weapon, whether loaded or unloaded, from which a shot may be discharged.
- "Weapon" includes anything used or designed to be used in destroying, defeating, or injuring an enemy.
- "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.
- "Explosive" is any chemical compound, mixture, or device that functions by explosion.
- any United States currency.
- any rope, ladder or other instrument or device for use in making, attempting, or aiding an escape. The statute provides that "[t]he unauthorized conveying, passing or possession of any rope or ladder or other instrument or device, adapted for use in making or aiding an escape, into any such institution or the grounds or buildings thereof, shall be presumptive evidence that it was so conveyed, passed or possessed for such use." This means that if you find that the defendant conveyed or passed into the institution or had in (his/her) possession while in the institution any rope or ladder or other instrument or device adapted for use in making or aiding an escape, then you may conclude, but are not required to, that the defendant intended to use it for the purpose of making or aiding an escape, provided of course that the inference drawn complies with the standards for inferences as explained in connection with my instruction on circumstantial evidence.

The state alleges that the defendant (conveyed or passed / caused to be conveyed or passed) these items *<insert as appropriate:>*

- into *<insert name of facility>* by means of *<insert specific allegations>*.
- to *<insert name of inmate>* while *<insert name of inmate>* was outside the premises of *<insert name of facility>* and the defendant knew that *<insert name of inmate>* was an inmate of *<insert name of facility>*.

### **Element 3 - Correctional institution**

The third element is that *<insert name of facility>* is a (correctional / humane) institution. For the purposes of this offense, institution includes the grounds and any buildings on the grounds. *<Insert the appropriate definition:>*

- A "correctional institution" is any correctional facility administered by the commissioner of correction.

- A "humane institution" is any (state mental hospital / community mental health center / treatment facility for children and adolescents / any facility or program administered by the (Department of Mental Health and Addiction Services / Department of Mental Retardation / Department of Children and Families)).<sup>1</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant's actions were not authorized by law, 2) the defendant conveyed or caused to be conveyed *<insert the object conveyed>* into *<insert name of facility>*, and 3) *<insert name of facility>* is a (correctional / humane) institution.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of conveying unauthorized items into an institution, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 17b-222.

## 4.6-2 Possession of Weapon or Dangerous Instrument in a Correctional Institution -- § 53a-174a

Revised to April 23, 2010

The defendant is charged [in count \_\_\_\_] with possession of a weapon or dangerous instrument in a correctional institution. The statute defining this offense reads in pertinent part as follows:

a person is guilty of possession of a weapon or dangerous instrument in a correctional institution when, being an inmate of such institution, (he/she) knowingly (makes / conveys from place to place / has in (his/her) possession or under (his/her) control) any (firearm / weapon / dangerous instrument / explosive / any substance or thing designed to kill, injure or disable).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Inmate in a correctional institution**

The first element is that the defendant at the time of the alleged offense was an inmate in <insert name of facility> and that <insert name of facility> is a correctional institution. "Correctional institution" means any correctional facility administered by the commissioner of correction.

### **Element 2 - Knowingly made, conveyed, possessed, or controlled**

The second element is that the defendant knowingly (made / conveyed from place to place / had in (his/her) possession or under (his/her) control) certain weapons or dangerous instruments. In this case, it is alleged that the defendant <insert allegations and type of weapon>.

"Knowingly" means that (he/she) was aware that (he/she) (possessed / made / conveyed / had under (his/her) control) <insert type of weapon>. <See Knowledge, Instruction 2.3-3.>

["Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property.]

### **Element 3 - Weapon or dangerous instrument**

The third element is that the item[s] the defendant had in (his/her) possession was a (firearm / weapon / dangerous instrument / explosive / a substance or thing designed to kill, injure, or disable). <Insert the appropriate definition:>

- "Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver, or other weapon, whether loaded or unloaded, from which a shot may be discharged.
- "Weapon" includes anything used or designed to be used in destroying, defeating, or injuring an enemy.
- "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required

is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

- "Explosive" is any chemical compound, mixture, or device that functions by explosion.<sup>1</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was an inmate at a correctional institution, 2) the defendant knowingly (made/ conveyed / possessed / had under (his/her) control) a weapon, and 3) the weapon was a *<insert type of weapon>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of possession of a weapon or dangerous instrument in a correctional institution, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Also see definition in General Statutes § 29-343.

## 4.6-3 Rioting at a Correctional Institution -- § 53a-179b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with rioting at a correctional institution. The statute defining this offense reads in pertinent part as follows:

a person is guilty of rioting at a correctional institution when (he/she) (incites / instigates / organizes / connives at / causes / aids / abets / assists / takes part in) any (disorder / disturbance / strike / riot / organized disobedience to the rules and regulations of such institution).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Rioting

The first element is that the defendant (incited / instigated / organized / connived at / caused / aided / abetted / took part in) any (disorder / disturbance / strike / riot / organized disobedience to the rules and regulations of the institution) at *<insert name of facility>*.

The words "incites, instigates, organizes, connives at, causes, aids, abets, or takes part" have their ordinary meaning. The words "disorder, disturbance, strike, riot, and organized disobedience to the rules and regulations" also have their ordinary meaning. There is no requirement that any particular number of persons take part in any incident.<sup>1</sup>

### Element 2 - Intent

The second element is that the defendant acted wilfully, that is, not accidentally or inadvertently. *<Review the evidence as to the defendant's participation in the disturbance.>*<sup>2</sup>

### Element 3 - At a correctional institution

The third element is that *<insert name of facility>* is a correctional institution. A "correctional institution" is any correctional facility administered by the commissioner of correction.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) *<insert specific allegations>* at *<insert name of facility>*, 2) the defendant acted wilfully, and 3) *<insert name of facility>* is a correctional institution.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of rioting at a correctional institution, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Nixon*, 32 Conn. App. 224, 246 (1993), *aff'd* on other grounds, 231 Conn. 545 (1995).

<sup>2</sup> See *State v. Nixon*, supra, 32 Conn. App. 250 (rioting at a correctional institute is a general intent crime). See also *State v. Robinson*, 227 Conn. 711, 743-44 (1993) (that the defendant had slashed the neck of a correction officer would not, by itself, be enough to satisfy this element; there must be some evidence that the defendant had actively participated in the riot, such as exhorting other inmates to take place in the disturbance).

## 4.6-4 Inciting to Riot at a Correctional Institution -- § 53a-179c

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with inciting to riot at a correctional institution. The statute defining this offense reads in pertinent part as follows:

a person is guilty of inciting to riot at a correctional institution when (he/she) (incites / instigates / organizes / connives at / causes / aids / abets / takes part in) any meeting of inmates of a correctional institution, the purpose of which is to foment (unrest / disorder / disturbance / strike / riot / organized disobedience to the rules and regulations of the institution).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Meeting of inmates**

The first element is that the defendant (incited / instigated / organized / connived at / caused / aided / abetted / took part in) a meeting of inmates at <insert name of facility>. The words "incites, instigates, organizes, connives at, causes, aids, abets, or takes part" have their ordinary meaning. There is no requirement that any particular number of persons take part in such meeting.<sup>1</sup>

### **Element 2 - Incitement**

The second element is that the purpose of such meeting was to foment (unrest / disorder / disturbance / strike / riot / organized disobedience to the rules and regulations of the institution). The words "disorder, disturbance, strike, riot, and organized disobedience to the rules and regulations" have their ordinary meaning. It does not matter whether the defendant intended to commit a crime when (he/she) so acted. Such act, however, must be done wilfully, that is, not accidentally or inadvertently.

The statute does not require that the defendant specifically intended to cause the (disturbance / unrest / disorder / strike / riot / organized disobedience to the rules and regulations of the institution).<sup>2</sup> The state must prove, however, that the defendant knew that the purpose of the meeting was to foment (unrest / disorder / disturbance / strike / riot / organized disobedience to the rules and regulations of the institution). <See Knowledge, Instruction 2.3-3.>

### **Element 3 - At a correctional institution**

The third element is that <insert name of facility> is a correctional institution. A "correctional institution" is any correctional facility administered by the commissioner of correction.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (incited / instigated / organized / connived at / caused / aided / abetted / took part in) a meeting, 2) the purpose of the meeting was to <insert specific allegations>, and 3) the meeting took place at a correctional institution,

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of inciting riot at a correctional institution, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Nixon*, 32 Conn. App. 224, 246 (1993), aff'd on other grounds, 231 Conn. 545 (1995).

<sup>2</sup> See *State v. Nixon*, supra, 32 Conn. App. 249-50 (inciting to riot at a correctional institution is a general intent crime). "From a policy standpoint, the court [in *State v. Pascucci*, 164 Conn. 69, 73 (1972),] reasoned that '[t]he dangers which the statute seeks to obviate could arise from acts which, although in no way intended to produce danger, readily could give rise to disorder, disturbance, strike or riot.'" *Id.*

## 4.6-5 Escape in the First Degree -- § 53a-169

Revised to December 1, 2007

**Note:** This statute has seven subsections defining the circumstances of escape. Subsections (a) (1), (2), (3) and (6) involve an actual escape from a place of confinement; subsections (a) (4) and (5) involve a failure to return to an institution from an authorized absence; subsection (a) (7) involves leaving the statute while under the jurisdiction of the Psychiatric Review Board. This instruction is therefore divided into 3 parts.

The defendant is charged [in count \_\_\_\_] with escape in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of escape in the first degree if (he/she) *<insert as appropriate:>*

- escapes from:
  - a correctional institution. • any public or private, nonprofit halfway house, group home or mental health facility or community residence to which (he/she) was transferred and (he/she) is in the custody of the commissioner of correction or is required to be returned to the custody of said commissioner upon (his/her) release from such facility.
  - a work detail or school on the premises of the correctional institution.
  - a hospital for mental illness in which (he/she) has been confined by court order.
  - fails to return from:
    - an authorized furlough.
    - an authorized work release or education release.
- while under the jurisdiction of the Psychiatric Security Review Board, but not confined to a hospital for mental illness, (he/she) leaves the state without authorization of the board.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### 1. Subsections (a) (1), (2), (3), or (6)

#### Element 1 - Confinement

The first element is that the defendant was confined to *<include as appropriate:>*

- a correctional institution.
- a public or private, nonprofit halfway house, group home or mental health facility or community residence to which (he/she) was transferred and (he/she) is (in the custody of the commissioner of correction / is required to be returned to the custody of said commissioner upon (his/her) release from such facility).
- a work detail or school on the premises of a correctional institution. Premises of a correctional institution includes the grounds and buildings of the correctional institution.
- a hospital for mental illness by court order.

A "correctional institution" is any correctional facility administered by the commissioner of correction.<sup>1</sup>

#### Element 2 - Escaped

The second element is that the defendant escaped from that institution. Escape means to voluntarily leave or depart from.

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was confined to *<insert name and type of facility>* and 2) the defendant escaped from that institution.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of escape in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **2. Subsections (a) (4) or (5)**

### **Element 1 - Authorized release**

The first element is that the defendant was on *<insert as appropriate>*:

- a furlough
- a work release
- an education release

authorized by the commissioner of correction.

### **Element 2 - Failed to return**

The second element is that defendant failed to return to *<insert name of facility>*.

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant was on an authorized *<insert type of leave>* and failed to return to *<insert name of facility>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of escape in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **3. Subsection (a) (7)**

### **Element 1 - Jurisdiction of the Psychiatric Security Review Board**

The first element is that the defendant was under the jurisdiction of the Psychiatric Security Review Board, but not confined to a hospital for mental illness.

### **Element 2 - Left the state**

The second element is that the defendant left the state of Connecticut without authorization from the board.

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was under the jurisdiction of the Psychiatric Security Review Board and 2) the defendant left the state of Connecticut without the board's authorization.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of escape in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-168 defines "correctional institution" for purposes of this offense.

***Commentary***

"The unifying overall theme of § 53a-169 is that an individual will risk punishment for 'escape' for an unauthorized departure from, or failure to return to, whatever may be designated as his place of incarceration or confinement." *State v. Lubus*, 216 Conn. 402, 409 (1990). Failure to report to a supervisory officer, even if on multiple occasions, may not be punished as an escape. *State v. Woods*, 234 Conn. 301, 311 (1995). "While failure to report may be evidence that the defendant has left his designated place of confinement, it is not enough, standing alone, to prove an unauthorized physical departure from the designated place of confinement. Such a departure is necessary for there to be an 'escape' within the meaning of § 53a-169 (a) (2)." *Id.*; see also *State v. Bember*, 39 Conn. App. 407, 411 (1995).

Illegality of the confinement is not a defense. *State v. Kyles*, 169 Conn. 438, 441 (1975).

## 4.6-6 Escape in the Second Degree -- § 53a-170

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with escape in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of escape in the second degree if (he/she) escapes from any correctional institution while employed at work outside such correctional institution.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Confinement**

The first element is that defendant at the time of the escape was confined in a correctional institution. A "correctional institution" is any correctional facility administered by the commissioner of correction.<sup>1</sup>

### **Element 2 - Escaped**

The second element is that the defendant escaped from that facility. "Escape" means to voluntarily leave or depart from.

### **Element 3 - While at outside employment**

The third element is that the escape occurred while the defendant was employed at work outside the correctional institution to which (he/she) was confined. In this case, it is alleged that the defendant was employed at <insert name of workplace> and voluntarily left this place of employment without authorization or permission from someone in charge of the defendant.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was confined to a correctional institution, 2) the defendant escaped from that institution, and 3) the escape occurred while the defendant was employed at work outside the institution.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of escape in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-168 defines "correctional institution" for purposes of this offense.

## 4.6-7 Escape from Custody -- § 53a-171 (a) (1)

Revised to December 1, 2007 (modified August 1, 2008)

The defendant is charged [in count \_\_\_\_] with escape from custody. The statute defining this offense reads in pertinent part as follows:

a person is guilty of escape from custody if such person escapes from custody.

For you to find the defendant guilty of this crime, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - In custody**

The first element is that the defendant was in custody. "Custody" means restraint by a public servant pursuant to (an arrest / court order [other than a Probate Court order]) directed against a person who is not in the custody of the Commissioner of Correction when such order is issued. "Public servant" means an (officer or employee of government or a quasi-public agency, elected or appointed / any person participating as advisor, consultant or otherwise, paid or unpaid, in performing a governmental function).

[<If custody was pursuant to arrest:> To constitute an arrest, there must be an actual or constructive seizure or detention of the person, performed with the intention to effect an arrest and so understood by the person detained. The presence of a formal declaration of arrest or control over the person or actual restraint of the person is not determinative of an arrest. A person is seized when, by means of physical force or show of authority, (his/her) freedom of movement is restrained. The test is whether in view of all the circumstances surrounding the incident, a reasonable person would have believed that (he/she) was not free to leave.<sup>1</sup>]

### **Element 2 - Escaped**

The second element is that the defendant escaped from such custody. Escape has its ordinary meaning. It means to leave custody without the permission of the keeper.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was in custody, and 2) that (he/she) escaped from that custody.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of escape from custody, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See *State v. Laws*, 37 Conn. App. 276, 282-84, cert. denied, 234 Conn. 907 (1995).

### ***Commentary***

"No specific intent is necessary to commit the crime of escape. The ordinary intent required to constitute the crime of escape is the intent to voluntarily do the act that results in the unlawful liberation from lawful custody." *State v. Laws*, supra, 37 Conn. App. 284; see also *State v. Roy*, 173 Conn. 35, 45-48 (1977).

"Precisely when an arrest occurs is a question of fact which depends on an evaluation of all the surrounding circumstances." (Internal quotation marks omitted.) *State v. Laws*, supra, 37 Conn. App. 282.

### ***Sentence Enhancer***

Section 53a-171 (b) provides an enhanced penalty if the defendant has been arrested for, charged with or convicted of a felony. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 4.6-8 Escape from Custody -- § 53a-171 (a) (2)

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_\_] with escape from custody. The statute defining this offense reads in pertinent part as follows:

a person is guilty of escape from custody if such person has been convicted as delinquent, has been committed to the department of children and families, and  
<insert as appropriate:>

- fails to return from a leave authorized by the commissioner of children and families.
- escapes from a state or private facility or institution in which such person has been assigned or placed by the commissioner of children and families.

For you to find the defendant guilty of this crime, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Delinquent committed to DCF**

The first element is that the defendant has been convicted as a delinquent and committed to the department of children and families.

### **Element 2 - Escaped**

The second element is that that the defendant <insert as appropriate:>

- failed to return from a leave authorized by the commissioner of children and families.
- escaped from a state or private facility or institution in which such person has been assigned or placed by the commissioner of children and families. Escape has its ordinary meaning. It means to leave custody without the permission of the keeper.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant has been convicted as a delinquent and committed to the department of children and families, and 2) (he/she) (failed to return from an authorized leave / escaped from <insert name of facility> to which the defendant had been assigned or placed by the commissioner of children and families).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of escape from custody, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

#### ***Sentence Enhancer***

Section 53a-171 (b) provides an enhanced penalty if the defendant has been arrested for, charged with or convicted of a felony. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## **4.7 VIOLATING CONDITIONS OF RELEASE**

### **4.7-1 Violating Conditions of Release -- § 53a-222 and § 53a-222a**

## 4.7-1 Violating Conditions of Release -- § 53a-222 and § 53a-222a

New, June 13, 2008

**Note:** If the underlying crime is a felony, then this offense is first degree; if the underlying crime is a misdemeanor or motor vehicle violation for which a sentence to a term of imprisonment may be imposed, then this offense is a second degree. Public Acts 2007, No. 07-123, §§ 3-4, separated the prior offense of Violating Conditions of Release in § 53a-222 into first and second degree, effective October 1, 2007.

The defendant is charged [in count \_\_\_\_] with violating conditions of release in the (first / second) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of violation of conditions of release in the (first / second) degree when, while charged with the commission of a (felony / misdemeanor / motor vehicle violation for which a sentence to a term of imprisonment may be imposed), such person is released and intentionally violates one or more of the imposed conditions on release.

For you to find the defendant guilty of this crime, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Charged with the commission of a crime**

The first element is that the defendant was charged with the commission of a (felony / misdemeanor / motor vehicle violation for which a sentence to a term of imprisonment may be imposed). There was evidence in this case that the defendant was charged with *<identify the offense>*. As a matter of law, *<identify the offense>* is a (felony / misdemeanor / motor vehicle violation for which a sentence to a term of imprisonment may be imposed).

### **Element 2 - Released with conditions**

The second element is that the defendant was released with conditions.<sup>1</sup> *<Describe conditions of release.>*

### **Element 3 - Violated condition of release**

The third element is that the defendant violated one or more of the conditions of release. The state alleges that (he/she) violated the conditions of (his/her) release by *<describe allegations>*.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was charged with the commission of a (felony / misdemeanor / motor vehicle violation for which a sentence to a term of imprisonment may be imposed), 2) (he/she) was released on the condition that *<describe conditions>*, and 3) (he/she) violated one or more of those conditions.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of violation of conditions of release, then you shall find the defendant guilty. On

the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Pursuant to § 54-63c (a) (authorizing law enforcement officers to release a person on a written promise to appear or after posting bond, but not authorizing them to set conditions or alter conditions set by the court), § 54-63d (c) (authorizing bail commissioners to impose non-financial conditions of release), or § 54-64a (c) (authorizing the court to set non-financial conditions of release).

## **PART 5: CRIMES AGAINST LIFE**

**5.1 MURDER AND MANSLAUGHTER**

**5.2 AFFIRMATIVE DEFENSE OF EXTREME  
EMOTIONAL DISTURBANCE**

**5.3 MANSLAUGHTER, MISCONDUCT, AND  
NEGLIGENT HOMICIDE WITH A  
MOTOR VEHICLE**

**5.4 FELONY MURDER AND ARSON  
MURDER**

**5.5 CAPITAL FELONY OR MURDER WITH  
SPECIAL CIRCUMSTANCES**

## **5.1 MURDER AND MANSLAUGHTER**

### **5.1 Introduction to Murder and Manslaughter**

#### **5.1-1 Murder -- § 53a-54a (a)**

#### **5.1-2 Manslaughter in the First Degree (Intentional) -- § 53a-55 (a) (1)**

#### **5.1-3 Manslaughter in the First Degree (Reckless Indifference) -- § 53a-55 (a) (3)**

#### **5.1-4 Manslaughter in the Second Degree -- § 53a-56 (a) (1)**

#### **5.1-5 Manslaughter with a Firearm -- § 53a-55a and § 53a-56a**

#### **5.1-6 Criminally Negligent Homicide -- § 53a-58**

#### **5.1-7 Manslaughter in the Second Degree (Aiding Suicide) -- § 53a-56 (a) (2)**

## 5.1 Introduction to Murder and Manslaughter

Revised to December 1, 2007

### *Intent*

Murder and intentional manslaughter are specific intent crimes. *State v. Prioleau*, 235 Conn. 274, 322 (1995) ("defendant must have had the conscious objective to cause the death of the victim"); *State v. Harris*, 49 Conn. App. 121, 128 (1998) (the intent required for intentional manslaughter is the intent to cause serious physical injury). The statutory definition of intent in General Statutes § 53a-3 (11) is applicable to murder and intentional manslaughter only so far as it refers to intent to cause a result, NOT intent to engage in proscribed conduct. *State v. Austin*, 244 Conn. 226, 235-36 (1998); *State v. Maia*, 48 Conn. App. 677, 685-88, cert. denied, 245 Conn. 918 (1998).

Reckless indifference manslaughter, manslaughter in the second degree, and criminally negligent homicide are general intent crimes. *State v. Edwards*, 214 Conn. 57, 67 (1990) (reckless indifference manslaughter); *State v. Hollowell*, 61 Conn. App. 463, 467 (2001) (reckless indifference manslaughter); *State v. Sotomayor*, 61 Conn. App. 364, 380, appeal dismissed, 260 Conn. 179, cert. denied, 537 U.S. 922, 123 S.Ct. 313, 154 L.Ed.2d 212 (2002) (manslaughter in the first degree and manslaughter in the second degree are distinguished by the level of recklessness).

### Intoxication

Intoxication is relevant to the defendant's capacity to form a specific intent. *State v. Rivera*, 223 Conn. 41, 50 (1992). It does not apply to general intent crimes. *State v. Austin*, 244 Conn. 226, 239 (1998). If the jury is instructed on lesser included offenses of general intent and on intoxication, this distinction must be made clear.

See Intoxication, Instruction 2.7-1, and its commentary.

### Simultaneous intent

A defendant may simultaneously intend to cause death and intend to cause serious physical injury, justifying convictions of both attempted murder and intentional assault for the same act against the same victim. *State v. Murray*, 254 Conn. 472, 479-83 (2000); *State v. Williams*, 237 Conn. 748, 754-57 (1996).

### Transferred intent

"[T]he principle of 'transferred intent' was created to apply to the situation of an accused who intended to kill a certain person and by mistake killed another. His intent is transposed from the person to whom it was directed to the person actually killed." *State v. Hinton*, 227 Conn. 301, 306 n.8 (1993). When multiple victims die as the result of the defendant's actions, the fact that the defendant only intended to kill one of them does not prevent that intent from being "transferred" to all of the victims; i.e., the unintended deaths are not reduced to manslaughter as long as the defendant had the intent to kill someone. *Id.*, 306-11. The doctrine of transferred intent does not logically apply to attempted murder. *Id.*, 317.

### *Lesser Included Offenses*

"Lesser included offense instructions are frequently appropriate in cases when the defendant is charged with murder." (Internal quotation marks omitted.) *State v. Smith*, 262

Conn. 453, 470 (2003). "[T]he critical element distinguishing murder from its lesser included offenses is intent, often the most significant and, at the same time, the most elusive element of the crime charged." (Internal quotation marks omitted.) *Id.* "If the evidence suggests at least a possibility that the defendant acted with a lesser intent than that of the specific intent to kill," the defendant is entitled to a lesser included offense instruction. (Internal quotation marks omitted.) *Id.*

"[I]nherent in a trial court's decision to charge on lesser included offenses is a finding that the defendant's state of mind may fall within one of many requisite mental states. Therefore, the trial court's charge on lesser included offenses, which occurs prior to the jury's deliberations, merely informs the consciousness of the jurors that the defendant's particular state of mind at the time he committed the crime may fall within one of many requisite mental states and that each requisite mental state serves as an element for a distinct crime." *State v. Tomlin*, 266 Conn. 608, 639 (2003) (finding error in court's refusal to instruct on manslaughter in the second degree and criminally negligent homicide).

"Permitting the jury to find the defendant guilty of a lesser charge of homicide than that charged, where the evidence supports such a finding, does not violate the defendant's sixth amendment right to notice. By the charge on the greater offense of murder, the defendant is put on notice that he will be put on trial for his action in causing the death of another person. Thus, having been given notice of the most serious degree of culpable intent by the murder indictment, he is implicitly given notice of those lesser included homicides that require a less serious degree of culpable intent." *State v. Rodriguez*, 180 Conn. 382, 405 (1980).

#### *With a firearm*

Manslaughter in the first degree or second degree with a firearm is a lesser included offense of murder only when the allegations in the charging documents include the use of a firearm. *State v. Falcon*, 26 Conn. App. 259, 266 (1991), cert. denied, 221 Conn. 911 (1992).

#### *Applicability of self-defense to lesser included offenses*

Self-defense is applicable to the lesser included offenses of manslaughter in the first degree, manslaughter in the second degree, and criminally negligent homicide. *State v. Harrison*, 32 Conn. App. 687, 695, cert. denied, 227 Conn. 932 (1993). Self-defense is not incompatible with a charge of manslaughter in the second degree. "Conduct may be a 'gross deviation from the standard of conduct that a reasonable person would observe in the situation'; General Statutes § 53a-3 (13); but, at the same time, may be wholly justified if the defendant's beliefs are reasonable from the perspective of that defendant." *State v. Hall*, 213 Conn. 579, 586 (1990).

### ***Defenses***

#### *Extreme emotional disturbance*

General Statutes § 53a-54a (a) provides in pertinent part that "it shall be an affirmative defense that the defendant committed the proscribed act or acts under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be, provided nothing contained in this subsection shall constitute a defense to a prosecution for, or preclude conviction

of, manslaughter in the first degree or any other crime." See Affirmative Defense of Extreme Emotional Disturbance, Instruction 5.2-1.

*Self-defense*

See Self-Defense and Defense of Others, Instruction 2.8-1.

*Intoxication*

"Intoxication is not a defense to murder, but is relevant to the capacity to form specific intent." (Internal quotation marks omitted.) *State v. Rivera*, supra, 223 Conn. 50.

*Attempt*

"Manslaughter committed without an intent to cause the death of another . . . is analogous to . . . involuntary manslaughter." (Citations omitted.) *State v. Almeda*, 189 Conn. 303, 308 (1983). There is no logic to attempting to commit involuntary manslaughter, hence attempted manslaughter is not a cognizable crime. *Id.*, 309.

*Accessorial liability*

Accessory to manslaughter is a cognizable crime. *State v. Harris*, supra, 49 Conn. App. 128-29.

## 5.1-1 Murder -- § 53a-54a (a)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with murder. The statute defining this offense reads in pertinent part as follows:

a person is guilty of murder when, with intent to cause the death of another person, (he/she) causes the death of such person or of a third person.<sup>1</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent to cause death

The first element is that the defendant specifically intended to cause the death of another person. There is no particular length of time necessary for the defendant to have formed the specific intent to kill. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

The intent to cause death may be inferred from circumstantial evidence. <See *Evidence of Intent, Instruction 2.3-2.*>

The type and number of wounds inflicted, as well as the instrument used, may be considered as evidence of the perpetrator's intent, and from such evidence an inference may be drawn that there was intent to cause a death. Any inference that may be drawn from the nature of the instrumentality used and the manner of its use is an inference of fact to be drawn by you upon consideration of these and other circumstances in the case in accordance with my previous instructions.<sup>2</sup> [<*Insert if warranted by evidence:*> Declarations and conduct of the accused before or after the infliction of wounds may be considered if you find they tend to show the defendant's intent.] This inference is not a necessary one; that is, you are not required to infer intent from the defendant's alleged conduct, but it is an inference you may draw if you find it is reasonable and logical and in accordance with my instructions on circumstantial evidence.

### Element 2 - Caused death

The second element is that the defendant, acting with the intent to cause the death of another person, caused the death of <*insert name of decedent*>.

[<*If transferred intent is applicable:*> It is not necessary for a conviction of murder that the state prove that the defendant intended to kill the person whom (he/she) did in fact kill. It is sufficient if the state proves that, acting with the intent to kill a person, (he/she) in fact killed a person.]

This means that the defendant's conduct was the proximate cause of the decedent's death. You must find it proved beyond a reasonable doubt that <*insert name of decedent*> died as a result of the actions of the defendant. <See *Proximate Cause, Instruction 2.6-1.*>

## Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant intended to cause the death of another person, and 2) in accordance with that intent, the defendant caused the death of <insert name of decedent>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of murder, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The language "or of a third person" "specifically provides for intent to be transferred from the target of the defendant's conduct to an unintended victim." *State v. Hinton*, 227 Conn. 301, 316 (1993).

<sup>2</sup> DO NOT instruct jurors "that one who uses a deadly weapon on the vital part of another 'will be deemed to have intended' the probable result of that act and that from such a circumstance the intent to kill properly may be inferred." *State v. Aponte*, 259 Conn. 512, 522 (2002). See also *State v. LaSalle*, 95 Conn. App. 263, 273-77, cert. denied, 279 Conn. 908 (2006) (reviewing court's instructions on inference of intent).

## 5.1-2 Manslaughter in the First Degree (Intentional) -- § 53a-55 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with manslaughter in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of manslaughter in the first degree when with intent to cause serious physical injury to another person, (he/she) causes the death of such person or of a third person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Intent to cause serious physical injury**

The first element is that the defendant specifically intended to cause serious physical injury to another person. "Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ." You will note that the basis of the charge under this statute is not that the defendant intended to kill, but that he intended to inflict serious physical injury.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

The intent to cause serious physical injury may be inferred from circumstantial evidence. <See *Evidence of Intent, Instruction 2.3-2.*>

### **Element 2 - Caused death**

The second element is that the defendant, acting with the intent to cause serious physical injury to another person, caused the death of <insert name of decedent>.

[<If transferred intent is applicable:> It is not necessary for a conviction of intentional manslaughter that the state prove that the defendant intended to kill the person whom (he/she) did in fact kill. It is sufficient if the state proves that, acting with the intent to cause serious physical injury to a person, (he/she) in fact killed a person.]

This means that the defendant's conduct was the proximate cause of the decedent's death. You must find it proved beyond a reasonable doubt that <insert name of decedent> died as a result of the actions of the defendant. <See *Proximate Cause, Instruction 2.6-1.*>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) that the defendant intended to cause serious physical injury to another person, and 2) in accordance with that intent, the defendant caused the death of *<insert name of decedent>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of manslaughter in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 5.1-3 Manslaughter in the First Degree (Reckless Indifference) -- § 53a-55 (a) (3)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with manslaughter in the first degree. The statute defining this offense reads in pertinent as follows:

a person is guilty of manslaughter in the first degree when under circumstances evincing an extreme indifference to human life, (he/she) recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person.

For the defendant to be found guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Conduct creating a grave risk of death**

The first element is that the defendant engaged in conduct that created a grave risk of death.

### **Element 2 - Recklessness**

The second element is that the defendant acted recklessly. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

### **Element 3 - Extreme indifference to human life**

The third element is that the defendant's conduct demonstrated an extreme indifference to human life. "Indifference" means simply not caring. It means lacking any interest in a matter one way or the other. Extreme means existing in the highest or greatest possible degree. Extreme indifference is more than ordinary indifference. It is synonymous with excessive and is the greatest departure from the ordinary. What evinces an extreme indifference to human life is a question of fact.

### **Element 4 - Caused death**

The fourth element is that the defendant's conduct caused the death of <insert name of decedent>. This means that the defendant's conduct was the proximate cause of the decedent's death. You must find it proved beyond a reasonable doubt that <insert name of decedent> died as a result of the actions of the defendant. <See *Proximate Cause, Instruction 2.6-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant engaged in conduct that created a grave risk of death, 2) the defendant acted recklessly, 3) (he/she) acted under circumstances evincing an extreme indifference to human life, and 4) the defendant caused the death of <insert name of decedent>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of manslaughter in the first degree, then you shall find the defendant guilty. On the

other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 5.1-4 Manslaughter in the Second Degree -- § 53a-56 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with manslaughter in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of manslaughter in the second degree when (he/she) recklessly causes the death of another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Caused death**

The first element is that the defendant caused the death of <insert name of decedent>. This means that the defendant's conduct was the proximate cause of the decedent's death. You must find it proved beyond a reasonable doubt that <insert name of decedent> died as a result of the actions of the defendant. <See Proximate Cause, Instruction 2.6-1.>

### **Element 2 - Recklessness**

The second element is that the defendant's actions that resulted in the death of <insert name of decedent> were reckless. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See Recklessness, Instruction 2.3-4.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant caused the death of <insert name of decedent>, and 2) the defendant's actions that resulted in the death were reckless.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of manslaughter in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 5.1-5 Manslaughter with a Firearm -- § 53a-55a and § 53a-56a

Revised to December 1, 2007

**Note:** The degree of the offense depends on the degree of the underlying crime.

The defendant is charged [in count \_\_\_\_] with manslaughter in the (first/second) degree with a firearm. The statute defining this offense reads in pertinent part as follows:

a person is guilty of manslaughter in the (first/second) degree with a firearm when (he/she) commits manslaughter in the (first/second) degree, and in the commission of such offense (he/she) (uses / is armed with and threatens the use of / displays or represents by (his/her) words or conduct that (he/she) possesses) a pistol, revolver, shotgun, machine gun, rifle or other firearm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Committed manslaughter in the first or second degree

The first element is that the defendant committed manslaughter in the (first/second) degree.

*<Insert the elements from the instruction for the underlying crime:>*

- § 53a-55 (a) (1): Manslaughter in the First Degree (Intentional), Instruction 5.1-2.
- § 53a-55 (a) (3): Manslaughter in the First Degree (Reckless Indifference), Instruction 5.1-3.
- § 53a-56 (a) (1): Manslaughter in the Second Degree, Instruction 5.1-4.

### Element 2 - With a firearm

The second element is that the defendant *<insert as appropriate:>*<sup>1</sup>

- used a firearm.
- was armed with, and threatened the use of a firearm.
- displayed or represented by words or conduct that (he/she) possessed a firearm. [*<If appropriate:>* It is not required that what the defendant represents to be a firearm be loaded or that the defendant actually have a firearm. It need only be represented by words or conduct that (he/she) is so armed.]

*<Describe specific allegations regarding firearm.>* The term "firearm" includes any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>2</sup> You must find that the firearm was operable at the time of the offense.<sup>3</sup>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for the underlying crime>*, and that in the commission of the crime the defendant (used / was armed with and threatened the use of / displayed or represented by words or conduct that (he/she) possessed) a firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of manslaughter in the (first/second) degree with a firearm, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Carefully tailor this part of the instruction according to the nature of the conduct alleged and the type of firearm involved. See *State v. Tomlin*, 266 Conn. 608, 626-27 (2003) (allegation of "did shoot" only supported instructing on the first of three distinct methods of committing the offense).

<sup>2</sup> See definitions for machine gun, rifle, shotgun, pistol or revolver in the glossary.

<sup>3</sup> The defendant may raise as an affirmative defense that the firearm was not operable. See Inoperability of Firearm, Instruction 2.9-3.

#### *Commentary*

"Under the cognate pleadings approach, manslaughter in the first degree with a firearm can be a lesser included offense of murder if the charging documents put the defendant on notice that the crime was committed by the use or threatened use of a firearm." *State v. Greene*, 274 Conn. 134, 157 (2005), cert. denied, 548 U.S. 926, 126 S.Ct. 2981, 165 L.Ed.2d 988 (2006) (charge alleged that "with the intent to cause death by means of a firearm" but did not allege that the death was actually caused by a firearm, so the lesser included instruction was improper); see also *State v. Tomlin*, supra, 266 Conn. 620 (allegation that defendant "did shoot" victim was sufficient); *State v. Ferreira*, 54 Conn. App. 763, 769, cert. denied, 251 Conn. 916 (1999) (bill of particulars alleged that defendant "shot and killed" victim); *State v. Guess*, 39 Conn. App. 224, 238, cert. denied, 235 Conn. 924 (1995) (information contained no allegation of the use of a firearm).

"Conspiracy to commit manslaughter . . . with a firearm is not a cognizable crime because it requires a logical impossibility, namely, that the actor . . . [agree and] intend that an unintended death result." (Internal quotation marks omitted.) *State v. Greene*, supra, 274 Conn. 164.

"No person shall be found guilty of manslaughter in the first degree and manslaughter in the first degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information." General Statutes § 53a-55a (a).

"No person shall be found guilty of manslaughter in the second degree and manslaughter in the second degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information." General Statutes § 53a-56a (a).

## 5.1-6 Criminally Negligent Homicide -- § 53a-58

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with criminally negligent homicide. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminally negligent homicide when, with criminal negligence, (he/she) causes the death of another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Cause of death

The first element is that the defendant caused the death of <insert name of decedent>. This means that the defendant's conduct was the proximate cause of the decedent's death. You must find proven beyond a reasonable doubt that <insert name of decedent> died as a result of the actions of the defendant. <See Proximate Cause, Instruction 2.6-1.>

### Element 2 - Criminal negligence

The second element is that the defendant was criminally negligent in causing the death. <See Criminal Negligence, Instruction 2.3-5.>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant caused the death of <insert name of decedent>, and 2) the defendant was criminally negligent when (he/she) caused the death.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminally negligent homicide, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 5.1-7 Manslaughter in the Second Degree (Aiding Suicide) -- § 53a-56 (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with manslaughter in the second degree. The statute defining this offense reads as follows:

a person is guilty of manslaughter in the second degree when (he/she) intentionally causes or aids another person, other than by force, duress or deception, to commit suicide.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Suicide

The first element is that *<insert name of decedent>* committed suicide.

### Element 2 - Intent

The second element is that the defendant intentionally caused or aided *<insert name of decedent>* to commit suicide. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) *<insert name of decedent>* committed suicide, and 2) that the defendant intentionally caused or aided *<insert name of decedent>* to commit suicide.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of manslaughter in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **5.2 AFFIRMATIVE DEFENSE OF EXTREME EMOTIONAL DISTURBANCE**

### **5.2-1 Affirmative Defense of Extreme Emotional Disturbance -- § 53a-54a (a) and § 53a-55 (a) (2)**

## 5.2-1 Affirmative Defense of Extreme Emotional Disturbance -- § 53a-54a (a) and § 53a-55 (a) (2)

Revised to December 1, 2007

The defendant has offered a defense to the charge of murder against (him/her). The defendant claims, and has offered evidence in support of that claim, that at the time of the incident giving rise to this charge, (he/she) was acting under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse.

This defense is called an affirmative defense. The burden of proving extreme emotional disturbance by a preponderance of the evidence is on the defendant. The state does not have the burden of proving the nonexistence of this defense. Nor does this defense serve to negate intent, but rather it is raised to establish circumstances that mitigate culpability. In other words, a person charged with murder may raise this defense to lessen the charge from murder to manslaughter in the first degree.

To determine whether the defendant has established the affirmative defense of extreme emotional disturbance by a preponderance of the evidence, you must find: 1) that the defendant was exposed to extremely unusual and overwhelming stress; and 2) that the defendant had an extreme emotional reaction to it, as a result of which there was a loss of self-control, and reason was overborne by extreme intense feelings, such as passion, anger, distress, grief, excessive agitation or other similar emotions. You should consider whether the intensity of these feelings was such that the defendant's usual intellectual controls failed and the normal rational thinking for that individual no longer prevailed at the time of the act.

It is your responsibility as the trier of fact to decide to what extent, if any, the defendant's emotions governed (his/her) conduct at the time of the death of <insert name of decedent>. In reaching that decision you may consider all the feelings which you find, in fact, influenced the defendant's conduct, for example, passion, anger, distress, grief, resentment, fright, hatred, excessive agitation, or other similar emotions.<sup>1</sup> While the emotional disturbance need not necessarily have been a spontaneous or sudden occurrence, and indeed, may have "simmered" in the defendant's mind for a long period of time,<sup>2</sup> the disturbance must actually have influenced (his/her) conduct at the time of the killing.<sup>3</sup>

If you find that the defendant acted under the influence of emotional disturbance, then you must consider whether such emotional disturbance was extreme. The word "extreme" refers to the greatest degree of intensity away from the normal state of the defendant.<sup>4</sup> Any emotional disturbance must have been so severe and intense that although intending to cause death, the defendant was so overwhelmed that the defendant's usual intellectual controls failed and that (his/her) normal rational thinking no longer prevailed at the time of the death of <insert name of decedent>.

If you find the defendant acted under the influence of emotional disturbance and that it was extreme, you must then consider whether there was a reasonable explanation or excuse for such

disturbance. In determining the reasonableness of a defendant's explanation or excuse, you must measure the reasonableness from the viewpoint of a reasonable person in the defendant's situation, under the circumstances as the defendant believed them to be.

As stated earlier, extreme emotional disturbance is an affirmative defense and the burden is upon the defendant to prove the elements of this defense by a preponderance of the evidence.<sup>5</sup> <See *Affirmative Defense, Instruction 2.9-1.*>

If you find that the defendant has sustained (his/her) burden of proving the defense of extreme emotional distress by a preponderance of the evidence, then you shall find (him/her) not guilty of murder. Furthermore, if you also find that the state has proved beyond a reasonable doubt that the defendant intended to cause the death of <insert name of decedent>, and that (his/her) actions did proximately cause the death of <insert name of decedent>, but under circumstances that do not constitute murder because (he/she) was acting under the influence of extreme emotional disturbance, you shall find the defendant guilty of manslaughter in the first degree. Finally, if you find that the defendant has not sustained (his/her) burden of proving this defense by a preponderance of the evidence, then you will reject the defense and determine whether the state has proved the elements of murder beyond a reasonable doubt.

---

<sup>1</sup> In *State v. Aviles*, 277 Conn. 281, 313-14, cert. denied, 549 U.S. 840, 127 S.Ct. 108, 166 L.Ed.2d 69 (2006), the Court reiterated that "these illustrative examples are neither conclusive nor exclusive" and that the inclusion of other "similar emotions" allows the jury to consider a wide range of emotional responses to a given situation, specifically, that the defendant's physical pain may have influenced his conduct; see also *State v. Person*, 60 Conn. App. 820, 828 (2000), cert. denied, 255 Conn. 926 (2001) (specific reference to defendant's mental illness not required); *State v. Kellman*, 56 Conn. App. 279, cert. denied, 252 Conn. 939 (2000) (specific reference to intoxication not required).

<sup>2</sup> See *State v. Aviles*, supra, 277 Conn. 314-15; *State v. Kaddah*, 250 Conn. 563, 580 (1999).

<sup>3</sup> See *State v. Kaddah*, supra, 250 Conn. 578 n.14 (this instruction adequately conveyed that the emotional disturbance need not be linked to a specific event, and did not require the defendant's requested instruction that explicitly said that the victim need not be the cause of it).

<sup>4</sup> *State v. Elliott*, 177 Conn. 1, 10 (1979); *State v. Hodge*, 248 Conn. 207, 262, cert. denied, 528 U.S. 969, 120 S.Ct. 409, 145 L.Ed.2d 319 (1999).

<sup>5</sup> In *Patterson v. New York*, 432 U.S. 197, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977), the U.S. Supreme Court held that it was not unconstitutional to place the burden of proving this defense on the defendant because it "does not serve to negate intent, but rather is raised to establish circumstances that mitigate culpability." See *State v. Elliott*, supra, 177 Conn. 6.

### ***Commentary***

The seminal case on this defense is *State v. Elliott*, supra, 177 Conn. 1. The Court described the adoption of the defense by the Model Penal Code as a considerable expansion from the common-law "heat of passion" or "sudden provocation" defense. "A homicide influenced by

an extreme emotional disturbance, in contrast, is not one which is necessarily committed in the 'hot blood' stage, but rather one that was brought about by a significant mental trauma that caused the defendant to brood for a long period of time and then react violently, seemingly without provocation." *Id.*, 7-8. While extreme emotional disturbance should not be limited by a "heat of passion" instruction, nothing precludes "a trier from finding a hot blood homicide to have occurred under extreme emotional disturbance." *State v. Asherman*, 193 Conn. 695, 734 (1984), cert. denied, 470 U.S. 1050, 105 S.Ct. 1749, 84 L.Ed.2d 814 (1985). See also *State v. Reid*, 193 Conn. 646, 660-61 n.16 (1984) ("trial courts should not give the heat of passion instruction when charging the jury on the affirmative defense of extreme emotional distress."); but see *State v. Casey*, 201 Conn. 174, 181 (1986), in which the defendant requested an instruction contrasting extreme emotional disturbance to the heat of passion. The Court found that under the circumstances of the case and the use by the state in its closing argument of a "classic 'heat of passion' scenario" to discount the extremity of the defendant's reaction, it was prejudicial error for the trial court not to instruct as requested.

### ***When defendant is entitled to the instruction***

"[A] defendant is entitled to a requested instruction on the affirmative defense of extreme emotional disturbance only if there is sufficient evidence for a rational juror to find that all the elements of the defense are established by a preponderance of the evidence." *State v. Person*, 236 Conn. 342, 353 (1996) (distinguishing "any evidence" standard applicable to general defenses from "sufficient evidence" standard applicable to affirmative defenses).

The defense "may be raised either by the defendant by way of an affirmative defense or by the state where it is warranted by the evidence." *State v. Asherman*, supra, 193 Conn. 731. "The fact that the defendant may rely on the mitigating circumstance as an affirmative defense to murder does not mean that by his contrary election he may also circumscribe the homicide offenses which the jury may consider." *Id.*, 732. Even if the defendant testifies that (he/she) was not upset, (he/she) is entitled to the instruction if there is sufficient evidence to warrant it. *State v. Person*, supra, 236 Conn. 350.

A court may instruct the jury on extreme emotional disturbance over the defendant's objection. *State v. Asherman*, supra, 193 Conn. 729-33. The court need not, however, instruct the jury, sua sponte, on the defense of extreme emotional disturbance. *State v. Thomas*, 62 Conn. App. 356, 364, cert. denied, 256 Conn. 912 (2001).

### ***Standard of reasonableness***

The reasonableness of the explanation or excuse is not to be determined from the viewpoint of the defendant, but rather, from the viewpoint of a reasonable person in the defendant's situation under the circumstances as the defendant believed them to be. *State v. Raguseo*, 225 Conn. 114, 126-28 (1993); *State v. Ortiz*, 217 Conn. 648, 651-58 (1991).

"[T]he defense does not require a provoking or triggering event; or that the homicidal act occur immediately after the cause or causes of the defendant's extreme emotional disturbance; or that the defendant have lost all ability to reason. Further, the reasonable man yardstick is only used to determine the reasonableness of the explanation or excuse of the action of the defendant from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. Thus, the statute sets forth a standard that is objective in its overview, but subjective as to the defendant's belief." *State v. Elliott*, supra, 177 Conn. 7.

The Court in *Elliott* then set forth guidelines to apply in determining whether the defendant has proved the affirmative defense of an extreme emotional disturbance. "[T]he jury must find that: (a) the emotional disturbance is not a mental disease or defect that rises to the level of insanity as defined by the Penal Code; (b) the defendant was exposed to an extremely unusual and overwhelming state, that is, not mere annoyance or unhappiness; and (c) the defendant had an extreme emotional reaction to it, as of which there was a loss of self-control, and reason was overborne by extreme intense feelings, such as passion, anger, distress, grief, excessive agitation or other similar emotions. Consideration is given to whether the intensity of these feelings was such that his usual intellectual controls failed and the normal rational thinking for that individual no longer prevailed at the time of the act." *Id.*, 9-10.

Note that many cases refer to these guidelines as the "elements" of the defense. See, e.g., see *State v. Blades*, 225 Conn. 609, 628 (1993), *State v. D'Antuono*, 186 Conn. 414, 420 (1982); *State v. Zdanis*, 182 Conn. 388, 390-91 (1980), cert. denied, 450 U.S. 1003, 101 S.Ct. 1715, 68 L.Ed.2d 207 (1981). The Supreme Court, in *State v. Forrest*, 216 Conn. 139, 148 (1990), stated that this was a mischaracterization of the discussion in *Elliot*. "Section 53a-54a describes the two elements of that defense as: (1) the defendant committed the offense under the influence of extreme emotional disturbance; and (2) there was a reasonable explanation or excuse for the defendant's extreme emotional disturbance. When we adopted the three criteria set forth in *Elliott*, we did not rewrite § 53a-54a, nor did we substitute our own 'elements' for those specified by the legislature. We merely interpreted the meaning of the phrase 'extreme emotional disturbance,' and . . . enumerated 'understandable guidelines' for 'instructing a jury' in determining the presence or absence of that mental condition. . . . These guidelines also serve to focus the presentation of evidence on three factual bases that we have deemed essential to support the inference that a defendant suffered from extreme emotional disturbance at a particular time." (Citations omitted.) *Id.*, 148; see also *State v. Person*, supra, 236 Conn. 351.

The Supreme Court has consistently rejected defendants' arguments that the inquiry into the reasonableness of the defendant's beliefs should be from the defendant's viewpoint rather than a reasonable person in the defendant's situation. "If the reasonableness of the explanation or excuse for a defendant's extreme emotional disturbance were determined by ascertaining whether the disturbance was reasonable to him, his subjective scheme of moral values would become a consideration in the 'reasonableness' inquiry, a result plainly not intended by the drafters [of the Model Penal Code]. Such an approach would also eliminate the barrier against debilitating individualization of the standard that the drafters intended to create by requiring that the explanation or excuse for a defendant's extreme emotional disturbance be reasonable." (Internal quotation marks omitted.) *State v. Ortiz*, supra, 217 Conn. 656-57; see also *State v. Dehaney*, 261 Conn. 336, 368-71 (2002), cert. denied, 537 U.S. 1217, 123 S.Ct. 1318, 154 L.Ed.2d 1070 (2003) (defendant requested an instruction that "the jury must consider not only the factual situation in which the defendant found himself, but also his unique mental and emotional characteristics and the impact of those factors on his perception of the circumstances").

## **5.3 MANSLAUGHTER, MISCONDUCT, AND NEGLIGENT HOMICIDE WITH A MOTOR VEHICLE**

**5.3-1 Manslaughter in the Second Degree with a  
Motor Vehicle -- § 53a-56b**

**5.3-2 Misconduct with a Motor Vehicle -- §  
53a-57**

**5.3-3 Negligent Homicide with a Motor Vehicle --  
§ 14-222a**

## 5.3-1 Manslaughter in the Second Degree with a Motor Vehicle -- § 53a-56b

Revised to June 12, 2009

The defendant is charged [in count \_\_\_\_] with manslaughter in the second degree with a motor vehicle. The statute defining this offense reads in pertinent part as follows:

a person is guilty of manslaughter in the second degree with a motor vehicle when, while operating a motor vehicle under the influence of (intoxicating liquor / any drug / both), (he/she) causes the death of another person as a consequence of the effect of such (liquor / drug).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Operated a motor vehicle**

The first element is that the defendant was operating a motor vehicle. A person "operates" a motor vehicle when, while in the vehicle, (he/she) intentionally does any act or makes use of any mechanical or electrical agency that alone or in sequence sets in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. <See *Intent: General, Instruction 2.3-1.*>

### **Element 2 - While under the influence**

The second element is that the defendant was under the influence of (intoxicating liquor / any drug / both). A person is under the influence of (intoxicating liquor / any drug / or both) when as a result of (drinking such beverage / ingesting such drug / or both) that person's mental, physical, or nervous processes have become so affected that (he/she) lacks to an appreciable degree the ability to function properly in relation to the operation of (his/her) motor vehicle.<sup>1</sup> It is for you to determine if the defendant was operating under the influence of (intoxicating liquor / any drug / both). That is, you must decide in view of all the other evidence in the case, whether the amount of (liquor consumed / drugs used) by the defendant so affected (his/her) mental, nervous and physical processes that (he/she) lacked to an appreciable degree the ability to function properly with relation to the operation of (his/her) automobile.

### **Element 3 - Caused death**

The third element is that the defendant's intoxication was the proximate cause of the death of <insert name of decedent>. You must find it proved beyond a reasonable doubt that <insert name of decedent> died as a result of the defendant's intoxication. <See *Proximate Cause, Instruction 2.6-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was operating a motor vehicle, 2) the defendant was under the influence of (intoxicating liquor / any drug / both) at the time, and 3) the defendant's intoxication was the proximate cause of the death of <insert name of decedent>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of manslaughter in the second degree with a motor vehicle, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Gordon*, 84 Conn. App. 519, 527 (2004); *State v. Sanko*, 62 Conn. App. 34, 41, cert. denied, 256 Conn. 905 (2001); *State v. Andrews*, 108 Conn. 209, 216 (1928).

#### ***Commentary***

On proximate cause, see *State v. Kwaak*, 21 Conn. App. 138, 146, cert. denied, 215 Conn. 811 (1990); see also *State v. Lawson*, 99 Conn. App. 233, 240-43, cert. denied 282 Conn. 901 (2007) (court properly declined to instruct on intervening cause).

#### ***Lesser included offenses***

Misconduct with a motor vehicle is not a lesser included offense of manslaughter with a motor vehicle while intoxicated. *State v. Kristy*, 11 Conn. App. 473, 484 n.7, cert. denied, 282 Conn. 901 (1987). Neither driving while intoxicated nor reckless driving is a lesser included offense of manslaughter with a motor vehicle while intoxicated. *State v. Wyatt*, 80 Conn. App. 703, 711-14 (2003), cert. denied, 267 Conn. 918 (2004).

Manslaughter in the second degree with a motor vehicle, which requires intoxication, and manslaughter in the second degree, which requires recklessness, are not the same for purposes of double jeopardy. *State v. Re*, 111 Conn. App. 466, 570-71 (2008), cert. denied, 290 Conn. 908 (2009).

As of October 1, 2006, driving while intoxicated no longer requires that the offense take place on a public highway, so that a violation of § 14-227a (a) (1) might now be a lesser included offense of manslaughter with a motor vehicle while intoxicated.

## 5.3-2 Misconduct with a Motor Vehicle -- § 53a-57

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with misconduct with a motor vehicle. The statute defining this offense reads in pertinent part as follows:

a person is guilty of misconduct with a motor vehicle when, with criminal negligence in the operation of a motor vehicle, (he/she) causes the death of another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Operated a motor vehicle**

The first element is that the defendant was operating a motor vehicle. A person "operates" a motor vehicle when, while in the vehicle, (he/she) intentionally does any act or makes use of any mechanical or electrical agency that alone or in sequence sets in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. <See *Intent: General, Instruction 2.3-1.*>

### **Element 2 - Proximate cause of death**

The second element is that the defendant caused the death of <insert name of decedent> through the operation of a motor vehicle. This means that the defendant's operation of a motor vehicle was the proximate cause of the decedent's death. You must find proven beyond a reasonable doubt that <insert name of decedent> died as a result of the defendant's operation of a motor vehicle. <See *Proximate Cause, Instruction 2.6-1.*>

### **Element 3 - Criminal negligence**

The third element is that the defendant was criminally negligent when (he/she) caused the death, in that the act or acts causing the death involved a substantial and unjustifiable risk that was not perceived by the defendant. <See *Criminal Negligence, Instruction 2.3-5.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was operating a motor vehicle, 2) the defendant's operation of the motor vehicle was the proximate cause of the death of <insert name of decedent>, and 3) the defendant acted with criminal negligence.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of misconduct with a motor vehicle, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

The elements of the crime are identified in *State v. Carter*, 64 Conn. App. 631, 637, cert. denied, 258 Conn. 914 (2001); see also *State v. Jones*, 92 Conn. App. 1 (2005) (evidence that defendant was racing with another vehicle sufficient to support proximate cause); *State v. Ortiz*,

29 Conn. App. 825, 835 (1993) (intoxication is not an element, but may be relevant to a finding of criminal negligence).

***Lesser included offenses***

Negligent homicide with a motor vehicle in violation of General Statutes § 14-222a is a lesser included offense of criminal misconduct with a motor vehicle. *State v. Pickles*, 28 Conn. App. 283, 289 (1992).

## 5.3-3 Negligent Homicide with a Motor Vehicle -- § 14-222a

Revised to December 1, 2007 (modified June 13, 2008)

**Note:** The degree of negligence under § 14-222a is ordinary civil negligence. *State v. Kluttz*, 9 Conn. App. 686, 698-99 (1987). The state may allege either statutory negligence or common-law negligence. Tailor the instruction accordingly. If both theories of negligence are submitted to the jury, the court should instruct the jury that they must be unanimous on the type of negligence found.

The defendant is charged [in count \_\_\_] with negligent homicide with a motor vehicle. The statute defining this offense imposes punishment on any person who, in consequence of the negligent operation of a motor vehicle, causes the death of another person

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Death of a person**

The first element is that a person has died, here <insert name of decedent>.

### **Element 2 - Negligent operation of a motor vehicle**

The second element is that the defendant operated a motor vehicle in a negligent manner. A person "operates" a motor vehicle within the meaning of the statute when, while in the vehicle, (he/she) intentionally does any act or makes use of any mechanical or electrical agency that alone or in sequence sets in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. <See *Intent: General, Instruction 2.3-1.*>

The defendant must have operated the motor vehicle in a negligent manner. Negligence is the violation of a legal duty that one person owes to another to exercise reasonable care for the safety of that person. There are, for purposes of this case, two kinds of negligence: statutory negligence and common-law negligence. Statutory negligence is the failure to conform one's conduct to a duty imposed by the legislature through the enactment of a statute. Common-law negligence is a violation of the duty to use reasonable care under the circumstances. A violation of either of these duties is negligence.

As I just stated, common-law negligence is the failure to use reasonable care under the circumstances. Reasonable care is the care that a reasonably prudent person would use in the same circumstances. Thus, negligence is doing something that a reasonably prudent person would not do under the circumstances, or failing to do what a reasonably prudent person would do under the circumstances. The use of proper care in a given situation is the care that an ordinarily prudent person would use in view of the surrounding circumstances. In determining the care that a reasonably prudent person would use in the same circumstances, you should consider all of the circumstances which were known or should have been known to the defendant at the time of the conduct in question. Whether care is reasonable depends upon the dangers

that a reasonable person would perceive in those circumstances. It is common sense that the more dangerous the circumstances, the greater the care that ought to be exercised.

Before determining whether the defendant used reasonable care, you must determine whether the defendant owed another person a duty of care. The test of the existence of a duty to use reasonable care is to be found in the foreseeability that harm of the general nature as that which occurred may result if that care is not exercised. Therefore, the state must prove beyond a reasonable doubt that the defendant, in view of the circumstances as (he/she) knew them or in the reasonable exercise of (his/her) faculties should have known them, should have reasonably anticipated that unless (he/she) used reasonable care, harm of the same general nature as that inflicted upon the deceased would or could occur.

In determining what is reasonable care under all the circumstances, the conduct of the defendant should be judged from the viewpoint of the reasonably prudent person. A driver of an automobile is entitled to assume that other drivers will obey the law. The driver may thus assume that other drivers will obey all statutes governing the operation of motor vehicles in this state and that they will use the care that a reasonably prudent person would use in the same circumstances. The driver is allowed to make this assumption until (he/she) knows, or in the exercise of reasonable care should have known, that such an assumption is no longer warranted.

Statutory negligence is the failure to conform one's conduct to a duty imposed by the legislature through the enactment of a statute. By enacting such a law, the legislature has determined the appropriate standard of care to which an individual's conduct must conform. Conduct that violates the requirements of such statute constitutes evidence of negligence.

The state alleges that the defendant has violated the motor vehicle statute *<identify statute and explain what it proscribes and how the defendant allegedly violated it>*.

Therefore, if the state proves to you beyond a reasonable doubt that the defendant violated this motor vehicle statute, that would be evidence of negligence, because it would be a breach of the duty of care in the operation of a motor vehicle as defined by the statute.

You may find that the defendant's conduct was negligent if you find beyond a reasonable doubt that the state has proved either common-law negligence or statutory negligence.

### **Element 3 - Proximate cause of death**

The third element is that the defendant's negligent operation of a motor vehicle was the proximate cause of *<insert name of decedent>*'s death. You must find beyond a reasonable doubt that *<insert name of decedent>* died as a result of the defendant's negligent operation of the motor vehicle. *<See Proximate Cause, Instruction 2.6-1.>*

Keep in mind that any negligence on *<insert name of decedent>*'s part is irrelevant to your determination of the defendant's guilt or non-guilt of this charge. *<Insert name of decedent>*'s reasonable or unreasonable operation of (his/her) motor vehicle does not relieve the defendant from (his/her) duty to operate (his/her) motor vehicle in a careful and cautious manner.<sup>1</sup>

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt 1) the death of <insert name of decedent>, 2) that the defendant operated a motor vehicle in a negligent manner, and 3) that the defendant's negligent operation of the motor vehicle caused the death.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of negligent homicide with a motor vehicle, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Contributory negligence is not a defense in a prosecution for negligent homicide with a motor vehicle unless such negligence on the part of the decedent is found to be the sole proximate cause of the death. *State v. Scribner*, 72 Conn. App. 736, 741 (2002). An instruction on contributory negligence and efficient intervening should be included if warranted by the facts of the case. See *id.*; *State v. Arrington*, 81 Conn. App. 518, 522-25, cert. granted on other grounds, 268 Conn. 922 (2004) (appeal withdrawn, judgment vacated April 21, 2005).

### ***Commentary***

Negligent homicide with a motor vehicle is a lesser included offense of misconduct with a motor vehicle. *State v. Pickles*, 28 Conn. App. 283, 288 (1992); *State v. Kluttz*, 9 Conn. App. 686, 698-99 (1987) (although § 14-222a is a motor vehicle violation rather than a crime, it can be considered a crime for purposes of the lesser included offense doctrine).

Multiple deaths are separate offenses. *State v. Kluttz*, *supra*, 9 Conn. App. 713-14 (defendant properly charged with 7 offenses for one accident that resulted in deaths).

### ***Sentence Enhancer***

Effective July 1, 2007, section 14-222a (b) provides an enhanced penalty if the motor vehicle is a commercial vehicle. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4. See Motor Vehicle, Commercial in the Glossary.

## **5.4 FELONY MURDER AND ARSON MURDER**

**5.4-1 Felony Murder -- § 53a-54c**

**5.4-2 Affirmative Defense to Felony Murder -- §  
53a-54c**

**5.4-3 Arson Murder -- § 53a-54d**

## 5.4-1 Felony Murder -- § 53a-54c

Revised to November 17, 2015

**Note:** The court should instruct the jury on the charged underlying felony prior to this instruction.

The defendant is charged [in count \_\_\_\_] with felony murder. The statute defining this offense reads in pertinent part as follows:

a person is guilty of murder when, acting either alone or with one or more persons, (he/she) commits or attempts to commit *<insert one of the following:>*

- robbery,
- home invasion<sup>1</sup>
- burglary,
- kidnapping,
- sexual assault in the first degree,
- aggravated sexual assault in the first degree,
- sexual assault in the third degree,
- sexual assault in the third degree with a firearm,
- escape in the first degree,
- escape in the second degree,

and, in the course of and in furtherance of such crime or of flight therefrom, (he/she), or another participant, if any, causes the death of a person other than one of the participants.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed a felony**

The first element is that the defendant, acting alone or with one or more other persons, committed or attempted to commit the crime of *<insert underlying felony and, if the felony is not charged in another count, instruct on the elements of that offense.>*<sup>2</sup>

[*<If the underlying felony is charged in another count:>* Proof of this element will depend on your deliberations pertaining to count *<insert number of count charging underlying felony>* on which I have already instructed you. If you find the defendant guilty of *<insert underlying felony>* in count *<insert number of count charging underlying felony>*, then this element of felony murder will be proven.]

### **Element 2 - Caused the death of another person**

The second element is that the actions of the defendant or another participant in the crime of *<insert underlying felony>* were the proximate cause of the death of *<insert name of decedent>*. You must find proved beyond a reasonable doubt that *<insert name of decedent>* died as a result of the defendant's or another participant's actions. *<See Proximate Cause, Instruction 2.6-1.>*

### **Element 3 - In the course of committing a felony**

The third element is that the defendant or another participant caused the death of <insert name of decedent> while in the course of, and in furtherance of, the commission or attempted commission of the crime of <insert underlying felony>, or, in immediate flight from the crime. This means that the death occurred during the commission of the <insert underlying felony> and in the course of carrying out its objective.

"In the course of the commission" of the <insert underlying felony> means during any part of the defendant's participation in the <insert underlying felony>. The phrase "in the course of the commission" is a time limitation and means conduct occurring immediately before the commission, during the commission or in the immediate flight after the commission of the <insert underlying felony>. The immediate murder of a person to eliminate a witness to the crime or to avoid detection is also "in the course of the commission." Thus, the death of <insert name of decedent> must have occurred somewhere within the time span of the occurrence of the facts which constitute the <insert underlying felony>.

"In furtherance of" the <insert underlying felony> means that the killing must in some way be causally connected to or as a result of the <insert underlying felony>, or the flight from the <insert underlying felony>. The actions of the defendant that caused the death of <insert name of decedent> must be done to aid the <insert underlying felony> in some way or to further the purpose of the <insert underlying felony>.

It does not matter that the act that caused the death was committed unintentionally or accidentally, rather than with the intention to cause death, nor does it matter if the death was the result of <insert name of decedent>'s fear or flight. The defendant is as guilty when committing this form of murder as (he/she) would be if (he/she) had intentionally committed the act that caused the death.

### **Element 4 - Victim was not a participant**

The fourth element is that <insert name of decedent> was not a participant in the <insert underlying felony>. A participant is one who takes part or shares in the underlying crime.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant, acting alone or with one or more other persons, committed or attempted to commit <insert underlying felony>, 2) the defendant or another participant in the <insert underlying felony> caused the death of <insert name of decedent>, 3) the defendant or another participant in the <insert underlying felony> caused the death while in the course of, and in furtherance of, the commission or attempted commission of the <insert underlying felony>, or, in immediate flight from the crime, and 4) <insert name of decedent> was not a participant in the crime of <insert underlying felony>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of felony murder, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Home invasion was added to the list of felonies supporting a charge of felony murder by Public Acts 2015, No. 211, § 3, effective October 1, 2015.

<sup>2</sup> If the underlying felony is an attempt crime, the court must instruct the jury on the definition of criminal attempt. *Small v. Commissioner of Correction*, 286 Conn. 707, 727 (2008). See Attempt -- § 53a-49 (a) (1), Instruction 3.2-1 and Attempt -- § 53a-49 (a) (2), Instruction 3.2-2.

### *Commentary*

"Felony murder occurs when, in the course of and in furtherance of another crime, one of the participants in that crime causes the death of a person who is not a participant in the crime. . . . The two phrases, 'in the course of' and 'in furtherance of,' limit the applicability of the statute with respect to time and causation." (Internal quotation marks omitted.) *State v. Montgomery*, 254 Conn. 694, 733 (2000).

The phrase "in the course of" focuses on the temporal relationship between the murder and the underlying felony and includes the period immediately before or after the actual commission of the crime. *State v. Montgomery*, supra, 254 Conn. 734 (kidnapping did not end until victim's death); *State v. Gomez*, 225 Conn. 347, 351 (1993) (kidnapping does not end until victim's liberty is restored).

The phrase "in furtherance of" requires that there be a "logical nexus between the felony and the homicide." *State v. Young*, 191 Conn. 636, 641 (1983). "All who join in a common design to commit an unlawful act, the natural and probable consequence of the execution of which involves the contingency of taking human life, are responsible for a homicide committed by one of them while acting in pursuance of, or *in furtherance of*, the common design." (Emphasis in original; internal quotation marks omitted.) *Id.*, 642. "In addition to its function in defining the scope of accomplice liability, the 'in furtherance' phrase also may serve, where only a single actor is involved, to exclude those murders which, while committed during the course of an underlying felony, are wholly unrelated to the commission of that crime." *Id.*, 643. See *State v. Montgomery*, supra, 254 Conn. 694 (kidnapping); *State v. Cooke*, supra, 89 Conn. App. 543-44 (armed robbery); *State v. Gayle*, 64 Conn. App. 596, 612, cert. denied, 258 Conn. 920 (2001) (armed robbery).

### *Intent*

Section "53a-54c contains no mens rea requirement beyond that of an intention to commit the underlying felony upon which the felony murder charge is predicated." *State v. Valeriano*, 191 Conn. 659, 662 (1983), cert. denied, 466 U.S. 974, 104 S.Ct. 2351, 80 L.Ed.2d 824 (1984); see also *State v. Kyles*, 221 Conn. 643, 667-68 (1992); *State v. Adorno*, 45 Conn. App. 187, 194, cert. denied, 242 Conn. 904 (1997).

### *Defenses*

As a matter of law, self-defense is not available as a defense to a charge of felony murder. *State v. Amado*, 254 Conn. 184, 200-01 (2000); *State v. Burke*, 254 Conn. 202, 205 (2000); *State v. Lewis*, 245 Conn. 779, 812 (1998). This "holding is consistent with the purpose underlying felony murder, which is to punish those whose conduct brought about an unintended

death in the commission or attempted commission of a felony . . . . The felony murder rule includes accidental, unintended deaths. Indeed, we have noted that crimes against the person like robbery, rape and common-law arson and burglary are, in common experience, likely to involve danger to life in the event of resistance by the victim. . . . Accordingly, when one kills in the commission of a felony, that person cannot claim self-defense, for this would be fundamentally inconsistent with the very purpose of the felony murder [statute]. . . ." (Citations omitted; internal quotation marks omitted.) *State v. Amado*, supra, 254 Conn. 201.

"[T]he legislature did not intend that extreme emotional disturbance be an affirmative defense if the *sole* crime with which a defendant is charged is felony murder." (Emphasis in original.) *State v. Chicano*, 216 Conn. 699, 716-17 (1990), cert. denied, 501 U.S. 1254, 111 S. Ct. 2898, 115 L. Ed. 2d 1062 (1991).

The sole affirmative defense available to a charge of felony murder is that specified in General Statutes § 53-54c. *State v. Chicano*, supra, 216 Conn. 717. See Affirmative Defense to Felony Murder, Instruction 5.4-2.

### ***Lesser included offenses***

Manslaughter is not a lesser included offense of felony murder, because manslaughter requires the showing of a culpable state of mind, which felony murder does not. *State v. Castro*, 196 Conn. 421, 429 (1985).

A defendant who produces enough evidence to support an instruction on the affirmative defense to felony murder, may also be entitled to a lesser included instruction of the underlying felony. In *State v. Bond*, 201 Conn. 34 (1986), the defendants claimed that although they agreed to commit the robbery, they did not know that their accomplice was armed with a knife and willing to use it. Without the lesser included charges, the jury was left with "the extreme alternatives of finding the defendants guilty of felony murder or acquitting them outright." *Id.*, 39. Similarly, in *State v. Green*, 207 Conn. 1 (1988), the defendant did not claim the affirmative defense, but because he introduced sufficient evidence that he terminated involvement in the underlying crime of robbery, he was entitled to an instruction on attempted robbery as a lesser included offense of felony murder.

### ***Capital felony***

Felony murder cannot be the predicate crime to a charge of capital felony. *State v. Johnson*, 241 Conn. 702, 713-14 (1997); *State v. Harrell*, 238 Conn. 828, 839 (1996).

## 5.4-2 Affirmative Defense to Felony Murder -- § 53a-54c

Revised to April 23, 2010

The evidence in this case raises what the law calls an affirmative defense. <See *Affirmative Defense, Instruction 2.9-1.*>

The defendant claims that that (he/she) did not participate in the homicidal act and had no reason to foresee that any of the other participants in the <insert underlying felony> intended to engage in conduct likely to result in death or serious physical injury.

For you to find the defendant not guilty of this charge, the defendant must prove the following elements by a preponderance of the evidence:

### **Element 1 - Did not participate in the homicidal act**

The first element is that the defendant did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in the commission of it.

### **Element 2 - Was not armed**

The second element is that the defendant was not armed with a deadly weapon or any dangerous instrument. "Deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles. "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

### **Element 3 - Did not believe any other participant was armed**

The third element is that the defendant had no reasonable ground to believe that any other participant was armed with such a weapon or instrument. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

### **Element 4 - Did not believe any other participant was likely to commit homicidal act**

The fourth element is that the defendant had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

## **Conclusion**

In summary, the defendant must prove by a preponderance of the evidence that 1) (he/she) did not participate in the homicidal act in any way, 2) (he/she) was not armed, 3) (he/she) had no reasonable ground to believe that any other participant was armed, and 4) (he/she) had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of felony murder, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved (his/her) defense by a preponderance of the evidence, then you shall find the defendant not guilty. If, on the other hand, you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

## ***Commentary***

The court is not obligated to submit this defense to the jury unless there is sufficient evidence to support a finding that each of these conditions has been proved by a preponderance of the evidence. *State v. Valeriano*, 191 Conn. 659, 663 (1983), cert. denied, 466 U.S. 974, 104 S. Ct. 2351, 80 L. Ed. 2d 824 (1984); *State v. Small*, 242 Conn. 93, 100-101 (1997). It is not clear whether it is proper for the trial court to instruct on this affirmative defense when the state requests the instruction but the defendant objects. See *State v. Small*, supra, 242 Conn. 101-102 (declining to decide issue because even if improper, instruction did not harm defendant).

## 5.4-3 Arson Murder -- § 53a-54d

Revised to December 1, 2007

**Note:** The court should instruct the jury on the charged underlying arson prior to this instruction.

The defendant is charged [in count \_\_\_\_] with arson murder. The statute defining this offense reads in pertinent part as follows:

a person is guilty of arson murder when, acting either alone or with one or more persons, (he/she) commits arson and, in the course of such arson, causes the death of a person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed arson**

The first element is that the defendant, acting alone or with one or more other persons, committed or attempted to commit arson. Proof of this element will depend on your deliberations pertaining to count *<insert number of count charging arson>* on which I have already instructed you. If you find the defendant guilty of arson in count *<insert number of count charging underlying arson>*, then this element of arson murder will be proven.

### **Element 2 - Caused the death of another person**

The second element is that the defendant or another participant caused the death of *<insert name of decedent>*. Thus, if during the actual commission of the arson, the defendant or another participant caused the death of *<insert name of decedent>*, then the defendant is guilty of arson murder. It does not matter that the defendant did not intend to cause the death.

### **Element 3 - In the course of committing arson**

The third element is that the defendant or another participant caused the death of *<insert name of decedent>* while in the course of the commission of the crime of arson. This means that the death occurred during the commission of the arson and in the course of carrying out its objective.

"In the course of the commission" of the arson means during any part of defendant's participation in the arson; thus, the death of *<insert name of decedent>* must have occurred somewhere within the time span of the occurrence of the facts which constitute the arson. The phrase "in the course of the commission" is a time limitation and means conduct occurring immediately before or during the commission of the arson.

It does not matter that the act that caused the death was committed unintentionally or accidentally, rather than with the intention to cause death, nor does it matter if the death was the result of *<insert name of decedent>*'s fear or flight. The defendant is as guilty when committing this form of murder as (he/she) would be if (he/she) had intentionally committed the act that caused the death.

**Element 4 - Victim was not a participant**

The fourth element is that <insert name of decedent> was not a participant in the commission of the arson.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant, acting alone or with one or more persons, committed the crime of arson, 2) the defendant or another participant caused the death of <insert name of decedent>, 3) the defendant or another participant caused the death of <insert name of decedent> during the course of committing arson, and 4) <insert name of decedent> was not a participant in the commission of the arson.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of arson murder, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

**Commentary**

"Intent to cause death is not an element of the crime of arson murder. Arson murder has no mens rea requirement beyond that of an intention to commit the underlying crime of arson upon which the charge of arson murder is predicated." *State v. Dupree*, 196 Conn. 655, 663, cert. denied, 474 U.S. 951, 106 S.Ct. 318, 88 L.Ed.2d 301 (1985).

"The phrase 'in the course of ' focuses on the temporal relationship between the murder and the underlying felony." (Internal quotation marks omitted.) *State v. Williams*, 65 Conn. App. 59, 89, cert. denied, 258 Conn. 923 (2001). Our Supreme Court defines "the phrase 'in the course of' to include the period immediately before or after the actual commission of the crime." *Id.*, 90. The omission of the phrase "in furtherance of," which is found in the felony murder statute, indicates "a legislative recognition that when the arsonist himself causes a death during the course of committing that crime it would be a rare case where the death would not also be 'in furtherance' of the arson." *State v. Young*, 191 Conn. 636, 644 (1983).

**Capital felony**

Arson murder cannot be the predicate crime to a charge of capital felony. *State v. Harrell*, 238 Conn. 828, 839 (1996).

## **5.5 CAPITAL FELONY OR MURDER WITH SPECIAL CIRCUMSTANCES**

### **5.5-1 Capital Felony or Murder with Special Circumstances -- § 53a-54b**

## **5.5-1 Capital Felony or Murder with Special Circumstances -- § 53a-54b**

Revised to May 23, 2013 (modified November 17, 2015)

Any violation of § 53a-54b occurring after April 25, 2012 is called a Murder with Special Circumstances rather than a Capital Felony. Note that Public Acts 2015, No. 84, § 7, modified the definition of the crime to include that the person "was eighteen years of age or older at the time of the offense."

**Note:** There are eight circumstances under which intentional murder may be raised to capital felony or murder with special circumstances. In most cases, the defendant will be charged with murder in one count, and capital felony or murder with special circumstances in another. Thus, the following instructions refer the jury back to the instructions on the murder count. In some cases, however, such as murder of a person under sixteen years of age, it may be charged in a single count. In that case, insert the instruction on murder (Instruction 5.1-1) rather than the reference to the murder count. Also, if the charging document lists the capital felony or murder with special circumstances charge as the first count, followed by the murder count, it should be amended to list the murder charge first, as this is the order in which the charges must be proved.

This instruction is organized as follows:

Part A. Circumstances raising murder to capital felony or murder with special circumstances

1. Murder of a peace officer
2. Murder for hire
3. Prior conviction of murder
4. Under sentence of life imprisonment
5. Murder of a kidnapped person
6. Murder during a sexual assault
7. Multiple murders
8. Murder of a person under sixteen years of age

Part B. Other instructions pertaining to capital felony or murder with special circumstances

1. Two Witness Instruction
2. Concluding Instruction

### **PART A. CIRCUMSTANCES RAISING MURDER TO CAPITAL FELONY OR MURDER WITH SPECIAL CIRCUMSTANCES**

#### **1. Murder of a peace officer -- § 53a-54b (1)**

The defendant is charged [in count \_\_\_\_] with capital felony or murder with special circumstances. The statute defining this offense reads in pertinent part as follows:

a person is guilty of a [capital felony/murder with special circumstances] when that person is convicted of the murder of *<insert one of the following:>*

- a member of the division of state police within the department of emergency services and public protection or of any local police department,
- a chief inspector or inspector in the division of criminal justice,
- a state marshal who is exercising authority granted under any provision of the general statutes,
- a judicial marshal in performance of the duties of a judicial marshal,
- a constable who performs criminal law enforcement duties,
- a special policeman for state property,
- a conservation officer or special conservation officer appointed by the commissioner of environmental protection,
- an employee of the department of correction or a person providing services on behalf of said department when such employee or person is acting within the scope of such employee's or person's employment or duties in a correctional institution or facility and the actor is confined in such institution or facility,
- or any firefighter,

while (he/she) was acting within the scope of (his/her) duties.

For you to find the defendant guilty of [capital felony/murder with special circumstances], the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Convicted of murder**

The first element is that the defendant was convicted of murder. Proof of this element will depend on your deliberations pertaining to count *<insert number of count charging murder>* which I have already instructed you on. If you find the defendant guilty of murder in count *<insert number of count charging murder>*, then this element of [capital felony/murder with special circumstances] will be proven.

### **Element 2 - Identity of decedent**

The second element is that *<insert name of decedent>* was *<insert appropriate title>*.

### **Element 3 - Within the scope of duties**

The third element is that *<insert name of decedent>* was acting in the discharge of (his/her) official duties as a[n] *<insert appropriate title>* at the time. Acting within the scope of (his/her) duties broadly encompasses any activity that falls within the officer's official duties. A[n] *<insert appropriate title>* has the duty to *<insert description of officer's duties>*. Whether (he/she) is acting in the performance of (his/her) duty must be determined in the light of that purpose and duty. If (he/she) is acting under a good faith belief that (he/she) is carrying out that duty, and if (his/her) actions are reasonably designed to that end, (he/she) is acting in the performance of (his/her) duties. Thus, this element requires evidence establishing that the *<insert appropriate title>* had been performing (his/her) official duties in good faith at the time of the commission of the murder.<sup>1</sup>

### **Special evidentiary rule**

*<Insert Two Witness Instruction. See below.>*

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant murdered <insert name of decedent>, 2) <insert name of decedent> was <insert appropriate title>, and 3) <insert name of decedent> was acting within the scope of (his/her) duties.

<Insert Concluding Instruction. See below.>

## **2. Murder for hire -- § 53a-54b (2)**

**Note:** The defendant may be charged as either the person committing the murder (see subsection (a)) or the person hiring another person to commit the murder (see subsection (b)).

### **a. Defendant charged with committing the murder**

The defendant is charged [in count \_\_\_\_] with [capital felony/murder with special circumstances].

The statute defining this offense reads in pertinent part as follows:

a person is guilty of a [capital felony/murder with special circumstances] when that person is convicted of murder and was hired to commit the murder for pecuniary gain.

For you to find the defendant guilty of [capital felony/murder with special circumstances], the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Convicted of murder**

The first element is that the defendant was convicted of murder. Proof of this element will depend on your deliberations pertaining to count <insert number of count charging murder>, which I have already instructed you on. If you find the defendant guilty of murder in count <insert number of count charging murder>, then this element of [capital felony/murder with special circumstances] will be proven.

### **Element 2 - For hire**

The second element is that the defendant was hired to commit the murder for pecuniary gain. The state must prove beyond a reasonable doubt that someone hired the defendant to intentionally cause the death of <insert name of decedent> in exchange for something of monetary value.

"Hired" means a relationship in which one person engages the services of another who, for pecuniary gain, agrees to perform specified services. "Pecuniary gain" means gain in the form of money. This means that someone engaged the defendant to murder the decedent in exchange for money. In other words, the state must prove beyond a reasonable doubt that there was an agreement between the defendant and the person who hired (him/her) to intentionally cause the death of the decedent in exchange for monetary compensation.<sup>2</sup>

### **Special evidentiary rule**

<Insert Two Witness Instruction. See below.>

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant murdered <insert name of decedent>, and 2) the defendant was hired to commit the murder for pecuniary gain.

<Insert Concluding Instruction. See below.>

### **b. Defendant charged with hiring a third party to commit the murder**

The defendant is charged [in count \_\_\_\_] with [capital felony/murder with special circumstances].

The statute defining this offense reads in pertinent part as follows:

a person is guilty of a [capital felony/murder with special circumstances] when that person hired another person to commit murder for pecuniary gain and that other person committed murder.

For you to find the defendant guilty of [capital felony/murder with special circumstances], the state must prove the following elements beyond a reasonable doubt:

#### **Element 1 - Hired another**

The first element is that the defendant hired <insert name of person hired> to murder <insert name of decedent> for pecuniary gain. "Hired" means a relationship when one person engages the services of another who, for pecuniary gain, agrees to perform specified services.

"Pecuniary gain" means gain in the form of money. This means that someone engaged the defendant to murder the decedent in exchange for money. In other words, the state must prove beyond a reasonable doubt that both the defendant and the person who (he/she) hired intended to cause the death of <insert name of decedent> in exchange for monetary compensation.<sup>3</sup>

#### **Element 2 - Caused death**

The second element is that the defendant, through (his/her) actions, and the person hired to commit the murder, caused the death of the decedent. You must find proved beyond a reasonable doubt that the decedent died as a result of the actions of the defendant and the person the defendant hired.

#### **Element 3 - Murder**

The third element is that the defendant and <insert name of person hired> caused the death of <insert name of decedent> with the specific intent to cause <insert name of decedent>'s death. There is no particular length of time necessary to form the specific intent to cause <insert name of decedent>'s death.

<See Intent: Specific, Instruction 2.3-1.>

#### **Special evidentiary rule**

<Insert Two Witness Instruction. See below.>

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant hired <insert name of person hired> to murder <insert name of decedent> for pecuniary gain, 2) <insert name

of person hired> caused the death of <insert name of decedent>, and 3) both the defendant and <insert name of person hired> intended to cause the death of <insert name of decedent>.

<Insert Concluding Instruction. See below.>

### **3. Prior conviction of murder -- § 53a-54b (3)**

**Note: A trial to a jury for a charge of §53a-54b (3) requires the trial to be bifurcated to avoid undue prejudice. *State v. Jones*, 234 Conn. 324 (1995). The state may, however, demonstrate a need to avoid a bifurcated trial. *Id.*, 347-49. The first part of the trial is a determination by the jury of whether the defendant committed the charged murder. During this part of the bifurcated trial, only instruct the jury on the elements of murder. The second part of the trial concerns the prior conviction for murder or felony murder. The following instruction is only to be given to the jury after it has returned a verdict of guilty as to the murder charged.**

Now that you have reached the verdict of guilty on the charge of murder, and heard further evidence regarding this case, I must instruct you on the additional crime of [capital felony/murder with special circumstances]. The statute defining [capital felony/murder with special circumstances] reads in pertinent part as follows:

a person is guilty of a [capital felony/murder with special circumstances] when that person commits murder and that person has previously been convicted of (intentional murder / murder committed in the course of the commission of a felony).

For you to find the defendant guilty of [capital felony/murder with special circumstances], the state must prove the following elements beyond a reasonable doubt:

#### **Element 1 - Convicted of murder**

The first element is that the defendant committed a murder. Based upon your verdict in the first part of this trial, you have found the first element to have been proved.

#### **Element 2 - Previous conviction**

The second element is that at the time of the commission of the murder, the defendant had previously been convicted of (intentional murder / murder committed in the course of the commission of a felony). "Convicted" means having a judgment of conviction entered by a court of competent jurisdiction against the defendant on that charge. This conviction must have occurred prior to the date the defendant murdered <insert name of decedent>.

#### **Special evidentiary rule**

<Insert Two Witness Instruction. See below.>

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant committed a murder, and 2) at the time (he/she) committed that murder, had previously been convicted of (intentional murder / murder committed in the course of the commission of a felony).

<Insert Concluding Instruction. See below.>

#### **4. Under sentence of life imprisonment -- § 53a-54b (4)**

**Note:** Although *State v. Jones*, 234 Conn. 324 (1995), pertains only to a charge under subsection 3 (see above), the same principles would apply to a charge under subsection 4, requiring the trial to be bifurcated to avoid undue prejudice, unless the state has demonstrated a need to avoid a bifurcated trial. The first part of the trial is a determination by the jury of whether the defendant committed the charged murder. During this part of the bifurcated trial, only instruct the jury on the elements of murder. The second part of the trial concerns whether the defendant is currently under a sentence of life imprisonment. The following instruction is only to be given to the jury after it has returned a verdict of guilty as to the murder charged.

Now that you have reached the verdict of guilty on the charge of murder, and heard further evidence regarding this case, I must instruct you on the additional crime of [capital felony/murder with special circumstances]. The statute defining [capital felony/murder with special circumstances] reads in pertinent part as follows:

a person is guilty of a [capital felony/murder with special circumstances] if that person is convicted of murder and that person was, at the time of commission of the murder, under a sentence of life imprisonment.

For you to find the defendant guilty of [capital felony/murder with special circumstances], the state must prove the following elements beyond a reasonable doubt:

##### **Element 1 - Convicted of murder**

The first element is that the defendant committed a murder. Based upon your verdict in the first part of this trial, you have found the first element to have been proved.

##### **Element 2 - Under sentence of life imprisonment**

The second element is that at the time of the commission of the murder, the defendant was under a sentence of life imprisonment. To prove this element, the state must prove beyond a reasonable doubt that the defendant had been sentenced to a term of life imprisonment at the time of the murder.

##### **Special evidentiary rule**

*<Insert Two Witness Instruction. See below.>*

##### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant committed a murder, and 2) at the time (he/she) committed that murder, had been sentenced to a term of life imprisonment.

*<Insert Concluding Instruction. See below.>*

#### **5. Murder of a kidnapped person -- § 53a-54b (5)**

**Note:** Under this subsection of capital felony, the state must only prove kidnapping in the second degree.

The defendant is charged [in count \_\_] with [capital felony/murder with special circumstances]. The statute defining this offense reads in pertinent part as follows:  
a person is guilty of a [capital felony/murder with special circumstances] if that person is convicted of the murder of a kidnapped person during the course of the kidnapping or before the kidnapped person is able to return or be returned to safety.

For you to find the defendant guilty of [capital felony/murder with special circumstances], the state must prove the following elements beyond a reasonable doubt:

**Element 1 - Convicted of murder**

The first element is that the defendant was convicted of murder. Proof of this element will depend on your deliberations pertaining to count <insert number of count charging murder> which I have already instructed you on. If you find the defendant guilty of murder in count <insert number of count charging murder>, then this element of [capital felony/murder with special circumstances] will be proved.

**Element 2 - Kidnapping**

The second element is that the defendant had kidnapped that person. Proof of this element will depend on your deliberations pertaining to count <insert number of count charging kidnapping> which I have already instructed you on. If you find the defendant guilty of kidnapping in count <insert number of count charging kidnapping>, then this element of [capital felony/murder with special circumstances] will be proved.

**Element 3 - Murder in the course of the kidnapping**

The third element is that the murder occurred during the course of the kidnapping or before such person was able to return to safety or be returned to safety. The phrase "in the course of the commission" is a time limitation and means conduct occurring immediately before the commission, during the commission or in the immediate flight after the commission of the kidnapping. The immediate murder of a person to eliminate a witness to the crime or to avoid detection is also "in the course of commission."

**Special evidentiary rule**

<Insert Two Witness Instruction. See below.>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant murdered <insert name of decedent>, 2) the defendant had kidnapped <insert name of decedent>, and 3) the murder occurred during the course of the kidnapping or before <insert name of decedent> was able to return to safety or be returned to safety.

<Insert Concluding Instruction. See below.>

**6. Murder during a sexual assault -- § 53a-54b (6)**

The defendant is charged [in count \_\_] with [capital felony/murder with special circumstances]. The statute defining this offense reads in pertinent part as follows:

a person is guilty of a [capital felony/murder with special circumstances] when that person is convicted of murder committed in the course of the commission of sexual assault in the first degree.

For you to find the defendant guilty of [capital felony/murder with special circumstances], the state must prove the following elements beyond a reasonable doubt:

**Element 1 - Convicted of murder**

The first element is that the defendant was convicted of murder. Proof of this element will depend on your deliberations pertaining to count <insert number of count charging murder> which I have already instructed you on. If you find the defendant guilty of murder in count <insert number of count charging murder>, then this element of [capital felony/murder with special circumstances] will be proved.

**Element 2 - Sexual assault**

The second element is that the murder occurred during the course of the commission of sexual assault in the first degree. Proof of this element will depend on your deliberations pertaining to count <insert number of count charging sexual assault> which I have already instructed you on. If you find the defendant guilty of sexual assault in count <insert number of count charging sexual assault>, then this element of [capital felony/murder with special circumstances] will be proven.

**Element 3 - Murder in the course of the sexual assault**

The third element is that the murder occurred in the course of the commission of the sexual assault. The phrase "in the course of the commission" is a time limitation and means conduct occurring immediately before the commission, during the commission or in the immediate flight after the commission of the sexual assault in the first degree. The immediate murder of a person to eliminate a witness to the crime or to avoid detection is also "in the course of commission."

**Special evidentiary rule**

<Insert Two Witness Instruction. See below.>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant murdered <insert name of decedent>, 2) the defendant had sexually assaulted <insert name of decedent>, and 3) the murder occurred during the course of the sexual assault.

<Insert Concluding Instruction. See below.>

**7. Multiple murders -- § 53a-54b (7)**

The defendant is charged [in count \_\_] with [capital felony/murder with special circumstances]. The statute defining this offense reads in pertinent part as follows:

a person is guilty of a [capital felony/murder with special circumstances] when that person is convicted of the murder of two or more persons at the same time or in the course of a single transaction.

For you to find the defendant guilty of [capital felony/murder with special circumstances], the state must prove the following elements beyond a reasonable doubt:

**Element 1 - Convicted of one or more murders**

The first element is that the defendant has been convicted of the murder of two or more persons. Proof of this element will depend on your deliberations pertaining to counts *<insert numbers of the counts charging each murder>* which I have already instructed you on. If you find the defendant guilty of murder in counts *<insert numbers of the counts charging each murder>*, then this element of [capital felony/murder with special circumstances] will be proved.

**Element 2 - Single transaction**

The second element is that the *<insert number of murders>* murders occurred at the same time or in the course of a single transaction. In order to prove that the murders occurred at the same time or in the course of a single transaction the state must prove beyond a reasonable doubt that the murders occurred at approximately the same time or that the murders were related to a single course of conduct or plan carried out as a series of events with a clear connection. Was there a plan, motive or event common to the *<insert number of murders>* murders? If you find beyond a reasonable doubt that the state has proved that all of the murders occurred as part of a single course of conduct with a clear connection, then you shall find this element to have been proven.

**Special evidentiary rule**

*<Insert Two Witness Instruction. See below.>*

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant murdered *<insert names of decedents>*, and 2) the *<insert number of murders>* murders occurred at the same time or in the course of a single transaction.

*<Insert Concluding Instruction. See below.>*

**8. Murder of a person under sixteen years of age -- § 53a-54b (8)**

The defendant is charged [in count \_\_] with [capital felony/murder with special circumstances].

The statute defining this offense reads in pertinent part as follows:

a person is guilty of a [capital felony/murder with special circumstances] when that person is convicted of the murder of a person under sixteen years of age.

For you to find the defendant guilty of [capital felony/murder with special circumstances], the state must prove the following elements beyond a reasonable doubt:

**Element 1 - Convicted of murder**

The first element is that the defendant was convicted of murder. Proof of this element will depend on your deliberations pertaining to count *<insert number of count charging murder>* which I have already instructed you on. If you find the defendant guilty of murder in count *<insert number of count charging murder>*, then this element of [capital felony/murder with special circumstances] will be proved.

**Element 2 - Age of decedent**

The second element is that at the time *<insert name of decedent>* was murdered, (he/she) was under sixteen years of age.<sup>4</sup>

**Special evidentiary rule**

*<Insert Two Witness Instruction. See below.>*

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant murdered *<insert name of decedent>*, and 2) that at the time *<insert name of decedent>* was murdered, (he/she) was under sixteen years of age.

*<Insert Concluding Instruction. See below.>*

**PART B. OTHER INSTRUCTIONS PERTAINING TO CAPITAL FELONY OR MURDER WITH SPECIAL CIRCUMSTANCES****1. TWO WITNESS INSTRUCTION<sup>5</sup>**

If you find that the state has proved all the elements of [capital felony/murder with special circumstances], there is one other rule that applies to the crime of [capital felony/murder with special circumstances] you must also consider. Our law provides that no person may be convicted of any crime punishable by death or life imprisonment<sup>6</sup> without the testimony of at least two witnesses or that which is equivalent thereto. It is our law in most criminal cases that a person can be convicted on the testimony of just one person. However, in a charge of [capital felony/murder with special circumstances] the state is required to produce more than a single witness. There is no requirement that there be two eyewitnesses to the crime, only that there has been produced for you the testimony of at least two witnesses or the equivalent thereto. In this case when you recall the evidence you have heard, and consider the number of witnesses called by the state in support of this charge of [capital felony/murder with special circumstances], you may find that the state has met its additional evidentiary burden of calling at least two witnesses or that which is equivalent thereto. The rule is satisfied if there are two or more witnesses, each testifying to different parts of the crimes, or to different circumstances concerning the charge, tending directly to show the guilt of the accused. The rule is also satisfied if one witness testifies to a principal fact and another witness testifies to circumstances corroborating it.

**2. CONCLUDING INSTRUCTION**

If you find that the state has called two witnesses, or the equivalent thereto, and unanimously proved the elements of the crime of [capital felony/murder with special circumstances] beyond a reasonable doubt, then you shall find the defendant guilty. If the state has failed to call two witnesses or the equivalent thereto or failed to prove beyond a reasonable doubt any one or more of the elements of the crime of [capital felony/murder with special circumstances], you shall find the defendant not guilty of this count.

---

<sup>1</sup> *State v. Reynolds*, 264 Conn. 1, 28-35 (2003), cert. denied, 541 U.S. 908, 124 S.Ct. 1614, 158 L.Ed.2d 254 (2004).

<sup>2</sup> *State v. Carpenter*, 275 Conn. 785, 866 (2005), cert. denied, 547 U.S. 1025, 126 S.Ct. 1578, 164 L.Ed.2d 309 (2006).

<sup>3</sup> *Id.*

<sup>4</sup> There is no requirement that the defendant knew the age of the victim, or that the defendant intended to kill a victim of a certain age. "If a defendant intentionally murders an innocent person without knowing that person's age, he does so at his peril, and will not be heard to plead in defense good faith or ignorance." (Internal quotation marks omitted.) *State v. Higgins*, 265 Conn. 35, 48 (2003).

<sup>5</sup> See General Statutes § 54-83; *State v. Ortiz*, 252 Conn. 533, 578 (2000).

<sup>6</sup> General Statutes § 54-83.

#### ***Commentary***

The statute says that the person must be "convicted of murder." The Supreme Court has interpreted this to exclude nonintentional murder, so that neither felony murder nor arson murder may be the predicate crime for [capital felony/murder with special circumstances]. See *State v. Johnson*, 241 Conn. 702, 713-14 (1997) (killing of police officer during the course of a robbery); *State v. Harrell*, 238 Conn. 828, 839 (1996) (killing of two people in a fire).

A conviction of intentional murder based on *Pinkerton* liability may be the predicate crime for [capital felony/murder with special circumstances]. *State v. Peeler*, 271 Conn. 338, 364-65 (2004), cert. denied, 546 U.S. 845, 126 S.Ct. 94, 163 L.Ed2d 110 (2005); *State v. Coltherst*, 263 Conn. 478, 500-501 (2003).

## **PART 6: CRIMES AGAINST SECURITY OF PERSON**

- 6.1 ASSAULT**
- 6.2 THREATENING**
- 6.3 RECKLESS ENDANGERMENT**
- 6.4 ROBBERY**
- 6.5 KIDNAPPING AND UNLAWFUL  
RESTRAINT**
- 6.6 CUSTODIAL INTERFERENCE**
- 6.7 STALKING AND HARASSMENT**
- 6.8 VIOLATION OF PROTECTIVE AND  
RESTRAINING ORDERS**
- 6.9 ABUSE**
- 6.10 INTIMIDATION**
- 6.11 RISK OF INJURY AND OTHER  
OFFENSES AGAINST CHILDREN**
- 6.12 COERCION**
- 6.13 STRANGULATION**

## **6.1 ASSAULT**

### **6.1 Introduction to Assault**

#### **6.1-1 Assault in the First Degree (Deadly Weapon or Dangerous Instrument) -- § 53a-59**

**(a) (1)**

#### **6.1-2 Assault in the First Degree (Maiming) -- § 53a-59 (a) (2)**

#### **6.1-3 Assault in the First Degree (Reckless Indifference) -- § 53a-59 (a) (3)**

#### **6.1-4 Assault in the First Degree (Aided by Two or More Persons) -- § 53a-59 (a) (4)**

#### **6.1-5 Assault in the First Degree (Discharge of a Firearm) -- § 53a-59 (a) (5)**

#### **6.1-6 Assault in the Second Degree (Serious Physical Injury) -- § 53a-60 (a) (1)**

#### **6.1-7 Assault in the Second Degree (Intentional with a Deadly Weapon) -- § 53a-60 (a) (2)**

#### **6.1-8 Assault in the Second Degree (Reckless with a Deadly Weapon) -- § 53a-60 (a) (3)**

#### **6.1-9 Assault in the Second Degree (Administration of Stupefying Drugs) -- § 53a-60 (a) (4)**

#### **6.1-10 Assault in the Second Degree (Board of Parole Employee or Member) -- § 53a-60 (a) (5)**

- 6.1-19 Assault in the Second Degree (Knockout) -- § 53a-60 (a) (6)**
- 6.1-11 Assault in the Second Degree with a Firearm -- § 53a-60a**
- 6.1-12 Assault in the Second Degree with a Motor Vehicle -- § 53a-60d**
- 6.1-13 Assault in the Third Degree (Physical Injury) -- § 53a-61 (a) (1)**
- 6.1-14 Assault in the Third Degree (Reckless) -- § 53a-61 (a) (2)**
- 6.1-15 Assault in the Third Degree (Deadly Weapon) -- § 53a-61 (a) (3)**
- 6.1-16 Assault of an Elderly, Blind, Disabled, Pregnant or Intellectually Disabled Person -- § 53a-59a, § 53a-60b, § 53a-60c, and § 53a-61a**
- 6.1-17 Assault of an Employee of the Department of Correction in the First Degree -- § 53a-59b**
- 6.1-18 Assault of a Pregnant Woman Resulting in Termination of Pregnancy -- § 53a-59c**

## 6.1 Introduction to Assault

Revised to May 10, 2012

"Under our penal code . . . assault is classified as first, second or third degree, the category depending upon the intent of the actor, the use of a deadly weapon or dangerous instrument, and the severity of the resultant injuries. General Statutes § 53a-59 through 53a-61." *State v. Ruiz*, 171 Conn. 264, 268 (1976). Since *Ruiz*, more ways of committing assault have been added to the statutes and an additional factor of the status of the victim has been added.

<b>DEGREE / SUBSECTION</b>	<b>INTENT</b>	<b>RESULT</b>	<b>ADDITIONAL FACTOR</b>
First degree § 53a-59 (a) (1)	Specific: to cause serious physical injury	Serious physical injury	With deadly weapon or dangerous instrument
First degree § 53a-59 (a) (2)	Specific: to disfigure, or destroy, amputate or disable permanently a member or organ of body.	Disfigurement, etc.	
First degree § 53a-59 (a) (3)	Extreme indifference recklessness	Serious physical injury	
First degree § 53a-59 (a) (4)	Specific: to cause serious physical injury	Serious physical injury	Aided by 2 or more persons
First degree § 53a-59 (a) (5)	Specific: to cause physical injury	Physical injury	By discharge of firearm
First degree § 53a-59a	As specified in § 53a-59 (a) (2), § 53a-59 (a) (3), or § 53a-59 (5)		Elderly, blind, disabled, intellectually disabled, or pregnant
First degree § 53a-59b	As specified in any subsection of § 53a-59		DOC employee acting in performance of duties
First degree § 53a-59c	As specified in § 53a-59 (a) (1)		Pregnant woman; resulting in termination of pregnancy
Second degree § 53a-60 (a) (1)	Specific: to cause serious physical injury	Serious physical injury	
Second degree § 53a-60 (a) (2)	Specific: to cause physical injury	Physical injury	With deadly weapon or dangerous instrument, other than discharge of firearm
Second degree § 53a-60 (a) (3)	Recklessness	Serious physical injury	With deadly weapon or dangerous instrument

Second degree § 53a-60 (a) (4)	Specific: to cause stupefaction by administration of drug; no medical or therapeutic purpose	Stupefaction	With drug capable of causing stupor; without consent
Second degree § 53a-60 (a) (5)	Specific: to cause physical injury	Physical injury	Defendant parolee; victim parole officer or member of board of parole
Second degree § 53a-60a (a)	As specified in any subsection of § 53a-60		With firearm
Second degree § 53a-60b	As specified in any subsection of § 53a-60 or § 53a-123 (a) (3)		Elderly, blind, disabled, intellectually disabled, or pregnant
Second degree § 53a-60c	As specified in any subsection of § 53a-60a		Elderly, blind, disabled, intellectually disabled, or pregnant; with firearm
Second degree § 53a-60d	General intent	Serious physical injury	With a motor vehicle while intoxicated
Third degree § 53a-61 (a) (1)	Specific: to cause physical injury	Physical injury	
Third degree § 53a-61 (a) (2)	Recklessness	Serious physical injury	
Third degree § 53a-61 (a) (3)	Criminal negligence	Physical injury	With deadly weapon or dangerous instrument or electronic defense weapon
Third degree § 53a-61a	As specified in any subsection of § 53a-61		Elderly, blind, disabled, intellectually disabled, or pregnant

***Separate offenses/ Lesser included offenses***

As the above chart shows, there are various ways to commit each degree of assault. When the question has been raised, the appellate courts have found the various ways within each degree to be separate offenses, and not lesser included offenses of one another. *State v. Moore*, 98 Conn. App. 85, 92, cert. denied, 280 Conn. 944 (2006), and cert. denied, 281 Conn. 906 (2007) (§ 53a-59 (a) (1) and (a) (5) are different offenses); *State v. Morgan*, 86 Conn. App. 196, 217 (2004), cert. denied, 273 Conn. 902 (2005) (§ 53a-59 (a) (1) and (a) (3) are different offenses); *State v. Barnett*, 53 Conn. App. 581, 602, cert. denied, 250 Conn. 918 (1999) (§ 53a-59 (a) (1) and (a) (4) are separate offenses); see also *State v. Denson*, 67 Conn. App. 803, 809, cert. denied, 260 Conn. 915 (2002) (§ 53a-59 (a) (2) is not a lesser included offense of § 53a-59 (a) (1)).

The lesser degrees of assault may be lesser included offenses of assault in the first and second degrees depending on the factual allegations of the information. See, e.g., *State v. Ruiz*, 171 Conn. 264, 272 (1976) (state's evidence limited to intentional conduct, so reckless assault could not be lesser included offense); see also *State v. Bunker*, 27 Conn. App. 322, 329-32 (1992) (discussing methodology of instructing on several assault charges, each with several lesser included offenses).

***Intent***

The assault statute provides for intent to be transferred. *State v. Carter*, 84 Conn. App. 263, 269, cert. denied, 271 Conn. 932 (2004), cert. denied, 544 U.S. 1066, 125 S.Ct. 2529, 161 L.Ed.2d 1120 (2005). The defendant need not be aware of the presence of the victim. *Id.*

A defendant may simultaneously intend to cause death and intend to cause serious physical injury, justifying convictions of both attempted murder and intentional assault for the same act against the same victim. *State v. Murray*, 254 Conn. 472, 481-83 (2000); *State v. Williams*, 237 Conn. 748, 754-55 (1996).

***Multiple assaults***

It is double jeopardy to be convicted of two counts of assault for a single continuous assault that resulted in two stab wounds to a single victim. *State v. Nixon*, 92 Conn. App. 586, 592-97 (2005).

## 6.1-1 Assault in the First Degree (Deadly Weapon or Dangerous Instrument) -- § 53a-59 (a) (1)

Revised to April 23, 2010

The defendant is charged [in count \_\_\_\_] with assault in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the first degree when with intent to cause serious physical injury to another person, (he/she) causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Intent to cause serious physical injury**

The first element is that the defendant intended to cause serious physical injury to another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

### **Element 2 - Caused serious physical injury**

The second element is that, acting with that intent, the defendant caused serious physical injury to <insert name of person injured>. This means that the defendant's conduct was the proximate cause of the person's injuries. You must find it proved beyond a reasonable doubt that <insert name of person injured> was seriously injured as a result of the actions of the defendant. <See *Proximate Cause, Instruction 2.6-1.*>

[<If person injured was not the person intended:> It does not matter whether <insert name of person injured> was the person upon whom the defendant intended to inflict serious physical injury. It is sufficient if you find that the defendant intended to cause serious physical injury to another person and that (he/she) in fact caused serious physical injury to that person or to some other person.]

### **Element 3 - With deadly weapon or dangerous instrument**

The third element is that the defendant caused that injury by means of a (deadly weapon / dangerous instrument). <Insert the appropriate definition:>

- "Deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles. If the weapon is a firearm, it may be unloaded, but it must be in such condition that a shot may be discharged from it. Thus, if the weapon is

loaded but not in working order, it is not a deadly weapon. If the weapon is unloaded but in working order, it is a deadly weapon.

- "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant had the specific intent to cause serious physical injury to another person *<insert name of person, if applicable>*, 2) the defendant did cause serious physical injury to *<insert name of person injured>*, and 3) the defendant caused the injury by means of a (deadly weapon / dangerous instrument).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

#### ***Sentence Enhancer***

Section 53a-59 (b) provides an enhanced penalty if the victim is either under 10 years of age or a witness if the defendant knew the victim was a witness. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 6.1-2 Assault in the First Degree (Maiming) -- § 53a-59 (a) (2)

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_\_] with assault in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the first degree when with intent to (disfigure another person seriously and permanently / to destroy, amputate or disable permanently a member or organ of (his/her) body), (he/she) causes such injury to such person or to a third person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent to disfigure or disable

The first element is that the defendant specifically intended *<insert as appropriate:>*

- to disfigure another person seriously and permanently. To "disfigure" is to mar, deform or deface. A serious and permanent disfigurement is one that is not minor or superficial and which will be permanent.
- to destroy, amputate or disable permanently a member or organ of another person's body.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### Element 2 - Caused disfigurement or disablement

The second element is that the defendant, acting with that intent, (disfigured another person seriously and permanently / destroyed, amputated or permanently disabled a member or organ of another person's body). This means that the defendant's conduct was the proximate cause of *<insert name of person injured>*'s injuries. You must find it proved beyond a reasonable doubt that *<insert name of person injured>* was injured as a result of the actions of the defendant. *<See Proximate Cause, Instruction 2.6-1.>*

[*<If person injured was not the person intended:>* It does not matter whether *<insert name of person injured>* was the person whom the defendant intended to (disfigure / disable). It is sufficient if you find that the defendant intended to (disfigure / disable) another person and that (he/she) in fact did (disfigure / disable) that person or some other person.]

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant had the specific intent to (disfigure another person *<insert name of person, if applicable>* seriously and permanently / destroy, amputate or permanently disable a member or organ of another person's body *<insert name of person, if applicable>*), and 2) the defendant did (disfigure *<insert name of person injured>* seriously and permanently / destroy, amputate or permanently disable a member or organ of *<insert name of person injured>*'s body).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

#### ***Commentary***

"Although this statute describes two types of specific intent, i.e., to disfigure seriously and permanently, or to destroy, amputate or disable permanently a member or organ of the body, it is a single crime that is completed by causing an injury consistent with either specified intent." *State v. Woods*, 25 Conn. App. 275, 280, cert. denied, 220 Conn. 923 (1991) (distinguishing this subsection from the common-law forms of mayhem and malicious disfigurement). A fetus is a "member" of the mother's body for purposes of § 53a-59 (a) (2) and § 53a-70a (a) (2). *State v. Sandoval*, 263 Conn. 524, 553 (2003).

The injuries described in this subsection are to be distinguished from "serious physical injury" because they must be permanent, whereas "serious physical injury" need not be. *State v. Denson*, 67 Conn. App. 803, 810-11, cert. denied, 260 Conn. 915 (2002). A scar on the victim's face, though minimal, constitutes serious, permanent disfigurement. *State v. Anderson*, 74 Conn. App. 633, 644, cert. denied, 263 Conn. 901 (2003).

A person may be convicted of attempt under this subsection if the person injured suffered only minor injuries, as long as the evidence supports the conclusion that the defendant acted with the intent to do serious and permanent bodily harm. *State v. Griffin*, 78 Conn. App. 646, 653-56 (2003). "Although it is true that intent may be gleaned from circumstantial evidence, including the type of wound inflicted, that is not the only basis from which the trier of fact may infer intent." *Id.*, 654.

#### ***Sentence Enhancer***

Section 53a-59 (b) provides an enhanced penalty if the victim is either under 10 years of age or a witness if the defendant knew the victim was a witness. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 6.1-3 Assault in the First Degree (Reckless Indifference) -- § 53a-59 (a) (3)

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_\_] with assault in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the first degree when under circumstances evincing an extreme indifference to human life (he/she) recklessly engages in conduct which creates a risk of death to another person, and thereby causes serious physical injury to another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Conduct creating a risk of death**

The first element is that the defendant engaged in conduct that created a risk of death.

### **Element 2 - Recklessness**

The second element is that the defendant acted recklessly. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

### **Element 3 - Extreme indifference to human life**

The third element is that the defendant acted under circumstances evincing an extreme indifference to human life. "Indifference" means simply not caring. It means lacking any interest in a matter one way or the other. Extreme means existing in the highest or greatest possible degree. Extreme indifference is more than ordinary indifference. It is synonymous with excessive and is the greatest departure from the ordinary. What evinces an extreme indifference to human life is a question of fact.

### **Element 4 - Caused serious physical injury**

The fourth element is that the defendant caused serious physical injury to another person. This means that the defendant's conduct was the proximate cause of the person's injuries. You must find it proved beyond a reasonable doubt that <insert name of person injured> was injured as a result of the actions of the defendant. <See *Proximate Cause, Instruction 2.6-1.*>

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant engaged in conduct that created a risk of death, 2) (he/she) acted recklessly, 3) (he/she) acted under circumstances evincing an extreme indifference to human life, and 4) (he/she) caused serious physical injury to *<insert name of person injured>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary******Sentence Enhancer***

Section 53a-59 (b) provides an enhanced penalty if the victim is either under 10 years of age or a witness if the defendant knew the victim was a witness. The jury must find this fact proved beyond a reasonable doubt in whatever format it is presented to them. The jury must find this fact beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 6.1-4 Assault in the First Degree (Aided by Two or More Persons) -- § 53a-59 (a) (4)

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_\_] with assault in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the first degree when with intent to cause serious physical injury to another person and while aided by two or more other persons actually present, (he/she) causes such injury to such person or to a third person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Intent to cause serious physical injury**

The first element is that the defendant specifically intended to cause serious physical injury to another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

### **Element 2 - Caused serious physical injury**

The second element is that, acting with that intent, the defendant caused serious physical injury to another person. This means that the defendant's conduct was the proximate cause of the person's injuries. You must find it proved beyond a reasonable doubt that <insert name of person injured> was injured as a result of the actions of the defendant. <See *Proximate Cause, Instruction 2.6-1.*>

[<If person injured was not the person intended:> It does not matter whether <insert name of person injured> was the person upon whom the defendant intended to inflict serious physical injury. It is sufficient if you find that the defendant intended to cause serious physical injury to another person and that (he/she) in fact caused serious physical injury to that person or to some other person.]

### **Element 3 - Aided by two or more persons**

The third element is that the defendant was aided by two or more other persons actually present when the injury occurred. This means that two or more other persons must have been present and actively assisting in the assault. Mere presence of inactive companions or mere acquiescence or some innocent act that in fact aids the perpetrator of the assault does not constitute aid within the meaning of the statute.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant had the specific intent to cause serious physical injury to another person *<insert name of person, if applicable>*, 2) the defendant did cause serious physical injury to *<insert name of person injured>*, and 3) the defendant was aided by two or more other persons actually present.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary******Sentence Enhancer***

Section 53a-59 (b) provides an enhanced penalty if the victim is either under 10 years of age or a witness if the defendant knew the victim was a witness. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 6.1-5 Assault in the First Degree (Discharge of a Firearm) -- § 53a-59 (a) (5)

Revised to December 1, 2007 (modified May 23, 2013)

The defendant is charged [in count \_\_\_\_] with assault in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the first degree when with intent to cause physical injury to another person, (he/she) causes such injury to such person or to a third person by means of the discharge of a firearm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent to cause physical injury

The first element is that the defendant intended to cause physical injury to another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

"Physical injury" is defined as impairment of physical condition or pain. It is a reduced ability to act as one would otherwise have acted. The law does not require that the injury be serious. It may be minor.

### Element 2 - Caused physical injury

The second element is that, acting with that intent, the defendant caused physical injury to another person. This means that the defendant's conduct was the proximate cause of <insert name of person injured>'s injuries. You must find it proved beyond a reasonable doubt that <insert name of person injured> was injured as a result of the actions of the defendant. <See Proximate Cause, Instruction 2.6-1.>

[<If person injured was not the person intended:> It does not matter whether <insert name of person injured> was the person upon whom the defendant intended to inflict physical injury. It is sufficient if you find that the defendant intended to cause physical injury to another person and that (he/she) in fact caused physical injury to that person or to some other person.]

### Element 3 - By discharge of a firearm

The third element is that the defendant caused the physical injury by means of the discharge of a firearm. "Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>1</sup>

It is not enough that the defendant was armed with a firearm or threatened to use a firearm. The defendant must have actually discharged the firearm.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant had the specific intent to cause physical injury to another person <insert name of person, if applicable>,

2) the defendant did cause physical injury to *<insert name of person injured>*, and 3) the defendant caused the injury by means of the discharge of a firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See definitions for machine gun, rifle, shotgun, pistol or revolver in the glossary.

### *Commentary*

#### *Sentence Enhancer*

Section 53a-59 (b) provides an enhanced penalty if the victim is either under 10 years of age or a witness if the defendant knew the victim was a witness. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 6.1-6 Assault in the Second Degree (Serious Physical Injury) -- § 53a-60 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with assault in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the second degree when with intent to cause serious physical injury to another person, (he/she) causes such injury to such person or to a third person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Intent to cause serious physical injury**

The first element is that the defendant specifically intended to cause serious physical injury to another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

### **Element 2 - Caused serious physical injury**

The second element is that, acting with that intent, the defendant caused serious physical injury to that person or to a third person. This means that the defendant's conduct was the proximate cause of <insert name of person injured>'s injuries. You must find it proved beyond a reasonable doubt that <insert name of person injured> was injured as a result of the actions of the defendant. <See *Proximate Cause, Instruction 2.6-1.*>

[<If person injured was not the person intended:> It does not matter whether <insert name of person injured> was the person upon whom the defendant intended to inflict serious physical injury. It is sufficient if you find that the defendant intended to cause serious physical injury to another person and that (he/she) in fact caused serious physical injury to that person or to some other person.]

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant had the specific intent to cause serious physical injury to another person <insert name of person, if applicable>, and 2) the defendant did cause serious physical injury to <insert name of person injured>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the second degree, then you shall find the defendant guilty. On the

other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.1-7 Assault in the Second Degree (Intentional with a Deadly Weapon) -- § 53a-60 (a) (2)

Revised to April 23, 2010

The defendant is charged [in count \_\_\_\_] with assault in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the second degree when with intent to cause physical injury to another person, (he/she) causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument other than by means of the discharge of a firearm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Intent to cause physical injury**

The first element is that the defendant specifically intended to cause physical injury to another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

"Physical injury" is defined as impairment of physical condition or pain. It is a reduced ability to act as one would otherwise have acted. The law does not require that the injury be serious. It may be minor.

### **Element 2 - Caused physical injury**

The second element is that the defendant caused physical injury to another person. This means that the defendant's conduct was the proximate cause of the person's injuries. You must find it proved beyond a reasonable doubt that <insert name of person injured> was injured as a result of the actions of the defendant. <See *Proximate Cause, Instruction 2.6-1.*>

[<If person injured was not the person intended:> It does not matter whether <insert name of person injured> was the person upon whom the defendant intended to inflict physical injury. It is sufficient if you find that the defendant intended to cause physical injury to another person and that (he/she) in fact caused physical injury to that person or to some other person.]

### **Element 3 - With deadly weapon or dangerous instrument**

The third element is that the defendant caused the injury by means of a (deadly weapon / dangerous instrument) other than by means of the discharge of a firearm. <Insert the appropriate definition:>

- "Deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles. If the weapon is a firearm, it may be unloaded, but it must be in such condition that a shot may be discharged from it. Thus, if the weapon is loaded but not in working order, it is not a deadly weapon. If the weapon is unloaded but in working order, it is a deadly weapon. Any injury caused by a deadly weapon must be by means other than the discharge of a firearm.

- "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant had the specific intent to cause physical injury to another person *<insert name of person, if applicable>*, 2) the defendant did cause physical injury to *<insert name of person injured >*, and 3) the defendant caused the injury by means of a (deadly weapon / dangerous instrument) other than by means of the discharge of a firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.1-8 Assault in the Second Degree (Reckless with a Deadly Weapon) -- § 53a-60 (a) (3)

Revised to April 23, 2010

The defendant is charged [in count \_\_\_\_] with assault in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the second degree when (he/she) recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Recklessness

The first element is that the defendant acted recklessly. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<Insert Recklessness, Instruction 2.3-4.>*

### Element 2 - Caused serious physical injury

The second element is that the defendant caused serious physical injury. This means that the defendant's conduct was the proximate cause of the person's injuries. You must find it proved beyond a reasonable doubt that *<insert name of person injured>* was injured as a result of the actions of the defendant. *<See Proximate Cause, Instruction 2.6-1.>*

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

### Element 3 - Deadly weapon or dangerous instrument

The third element is that the defendant used a deadly weapon or a dangerous instrument in causing the serious physical injury to another. *<Insert the appropriate definition:>*

- "Deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles. If the weapon is a firearm, it may be unloaded, but it must be in such condition that a shot may be discharged from it. Thus, if the weapon is loaded but not in working order, it is not a deadly weapon. If the weapon is unloaded but in working order, it is a deadly weapon.
- "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ.

It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant acted recklessly, 2) the defendant caused serious physical injury to *<insert name of person injured>*, and 3) the defendant caused the injury by means of a (deadly weapon / dangerous instrument).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.1-9 Assault in the Second Degree (Administration of Stupefying Drugs) -- § 53a-60 (a) (4)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with assault in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the second degree when for a purpose other than lawful medical or therapeutic treatment, (he/she) intentionally causes stupor, unconsciousness or other physical impairment or injury to another person by administering to such person, without (his/her) consent, a drug, substance or preparation capable of producing the same.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Administered drugs**

The first element is that the defendant administered a drug, substance or preparation capable of producing stupor or unconsciousness or other physical impairment to another person.

### **Element 2 - Without consent**

The second element is that the person to whom the substance was administered did not give (his/her) consent to the administration of the drug, substance or preparation..

### **Element 3 - Caused stupor or unconsciousness**

The third element is that the substance did, in fact, cause stupor, unconsciousness or other physical impairment to that person.

### **Element 4 - Intent to cause stupor or unconsciousness**

The fourth element is that the defendant administered the drug with the specific intent of causing such stupor, unconsciousness or other physical impairment. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Element 5 - No lawful purpose**

The fifth element is that the administration of the drug or substance was for a purpose other than lawful medical or therapeutic treatment.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant administered a drug or other substance capable of causing stupor, unconsciousness or other physical impairment to <insert name of complainant>, 2) this was done without the consent of <insert name of complainant>, 3) the administration of the substance caused stupor or unconsciousness or other physical impairment to <insert name of complainant>, 4) the defendant intended to caused stupor or unconsciousness or other physical impairment to <insert name of complainant>, and 5) the defendant had no lawful medical or therapeutic purpose for such actions.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary***

See *State v. Nunes*, 260 Conn. 649, 657-82 (2002) (discussing evidentiary requirements).

## 6.1-10 Assault in the Second Degree (Board of Parole Employee or Member) -- § 53a-60 (a) (5)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with assault in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the second degree when (he/she) is a parolee from a correctional institution and with intent to cause physical injury to an employee or member of the board of parole, (he/she) causes physical injury to such employee or member.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - On parole**

The first element is that the defendant was, at the time of the alleged offense, on parole from a correctional institution. This means (he/she) was released from a correctional institution prior to the expiration of (his/her) term of imprisonment but remains under the supervision of the board of parole.

### **Element 2 - Intent to cause physical injury**

The second element is that the defendant intended to cause physical injury to a person known by the defendant to be an employee or member of the board of parole. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Element 3 - Caused physical injury**

The third element is that the defendant in fact caused physical injury to an employee or member of the board of parole. This means that the defendant's conduct was the proximate cause of the person's injuries. You must find it proved beyond a reasonable doubt that <insert name of person injured> was injured as a result of the actions of the defendant. <See Proximate Cause, Instruction 2.6-1.>

"Physical injury" is defined as impairment of physical condition or pain. It is a reduced ability to act as one would otherwise have acted. The law does not require that the injury be serious. It may be minor.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was a parolee from a correctional institution, 2) the defendant intended to cause physical injury to <insert name of person injured>, whom (he/she) knew to be an employee or member of the board of parole, and 3) the defendant caused physical injury to <insert name of person injured>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the second degree, then you shall find the defendant guilty. On the

other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary***

See *State v. Nixon*, 231 Conn. 545, 554 (1995) (distinguishing this assault offense from Assault on Public Safety or Emergency Medical Personnel, § 53a-167c).

## 6.1-11 Assault in the Second Degree with a Firearm -- § 53a-60a

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with assault in the second degree with a firearm. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the second degree with a firearm when (he/she) commits assault in the second degree, and in the commission of such offense (he/she) (uses / is armed with and threatens the use of / displays or represents by (his/her) words or conduct that (he/she) possesses) a pistol, revolver, machine gun, shotgun, rifle or other firearm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Committed assault in the second degree

The first element is that the defendant committed assault in the second degree. <See instruction for underlying crime:>

- § 53a-60 (a) (1): Assault in the Second Degree, Instruction 6.1-6.
- § 53a-60 (a) (2): Assault in the Second Degree, Instruction 6.1-7.
- § 53a-60 (a) (3): Assault in the Second Degree, Instruction 6.1-8.
- § 53a-60 (a) (4): Assault in the Second Degree, Instruction 6.1-9.
- § 53a-60 (a) (5): Assault in the Second Degree, Instruction 6.1-10.

### Element 2 - With a firearm

The second element is that in the commission of the assault the defendant <insert as appropriate:><sup>1</sup>

- used a firearm.
- was armed with and threatened the use of a firearm.
- displayed or represented by (his/her) words or conduct that (he/she) possessed a firearm. [It is not required that what the defendant represents to be a firearm be loaded or that the defendant actually have a firearm. It need only be represented by words or conduct that (he/she) is so armed.]

<Describe specific allegations regarding firearm.> "Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>2</sup> You must find that the firearm was operable at the time of the incident.<sup>3</sup>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that <insert the concluding summary from the instruction for the underlying crime>, and that in the commission of the assault the defendant (used / threatened the use of / displayed or represented that (he/she) had) a firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Carefully tailor this part of the instruction according to the nature of the conduct alleged and the type of firearm involved. See *State v. Tomlin*, 266 Conn. 608, 626-27 (2003) (allegation of "did shoot" only supported instructing on the first of three distinct methods of committing the offense).

<sup>2</sup> See definitions for machine gun, rifle, shotgun, pistol or revolver in the glossary.

<sup>3</sup> The defendant may raise as an affirmative defense that the firearm was not operable. See Inoperability of Firearm, Instruction 2.9-3.

#### ***Commentary***

"No person shall be found guilty of assault in the second degree and assault in the second degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information." General Statutes § 53a-60a (a).

## 6.1-12 Assault in the Second Degree with a Motor Vehicle -- § 53a-60d

Revised to June 12, 2009

The defendant is charged [in count \_\_\_\_] with assault in the second degree with a motor vehicle. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the second degree with a motor vehicle when, while operating a motor vehicle under the influence of (intoxicating liquor / any drug / both), (he/she) causes serious physical injury to another person as a consequence of the effect of such (liquor / drug).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Operated a motor vehicle**

The first element is that the defendant was operating a motor vehicle. A person "operates" a motor vehicle when, while in the vehicle, (he/she) intentionally does any act or makes use of any mechanical or electrical agency that alone or in sequence sets in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. <See Intent: General, Instruction 2.3-1.>

### **Element 2 - While under the influence**

The second element is that the defendant was under the influence of (intoxicating liquor / any drug / both). A person is under the influence of (intoxicating liquor / any drug / both) when, as a result of drinking such beverage or introducing such drug or both into (his/her) system, (his/her) mental, physical, or nervous processes have become so affected that (he/she) lacks to an appreciable degree the ability to function properly in relation to the operation of a motor vehicle. It is for you to determine if the defendant was operating under the influence of (intoxicating liquor / any drug / both). That is, you must decide in view of all the other evidence in the case, whether the amount of (liquor consumed / drugs used) by the defendant so affected (his/her) mental, nervous and physical processes that (he/she) lacked to an appreciable degree the ability to function properly with relation to the operation of (his/her) automobile.

### **Element 3 - Caused serious physical injury**

The third element is that the defendant's intoxication was the proximate cause of serious physical injury to <insert name of person injured>. You must find it proved beyond a reasonable doubt that <insert name of person injured> was injured as a result of the defendant's intoxication. <See Proximate Cause, Instruction 2.6-1.>

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was operating a motor vehicle, 2) the defendant was under the influence of (intoxicating liquor / drug / both), and 3) the defendant's intoxication was the proximate cause of the serious physical injury to *<insert name of person injured>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the second degree with a motor vehicle, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary***

The prima facie "provisions of [General Statutes] § 14-227a (d) do not apply to a prosecution of assault in the second degree with a motor vehicle while intoxicated in violation of General Statutes § 53a-60d (a)." *State v. Leroy*, 16 Conn. App. 472, 477 (1988).

## 6.1-13 Assault in the Third Degree (Physical Injury) -- § 53a-61 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with assault in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the third degree when with intent to cause physical injury to another person, (he/she) causes such injury to such person or to a third person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent to cause physical injury

The first element is that the defendant specifically intended to cause physical injury to another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

"Physical injury" is defined as impairment of physical condition or pain. It is a reduced ability to act as one would otherwise have acted. The law does not require that the injury be serious. It may be minor.

### Element 2 - Caused physical injury

The second element is that the defendant caused physical injury to another person. This means that the defendant's conduct was the proximate cause of the person's injuries. You must find it proved beyond a reasonable doubt that <insert name of person injured> was injured as a result of the actions of the defendant. <See *Proximate Cause, Instruction 2.6-1.*>

[<If person injured was not the person intended:> It does not matter whether <insert name of person injured> was the person upon whom the defendant intended to inflict physical injury. It is sufficient if you find that the defendant intended to cause physical injury to another person and that (he/she) in fact caused physical injury to that person or to some other person.]

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant had the specific intent to cause physical injury to another person <insert name of person, if applicable>, and 2) the defendant caused physical injury to <insert name of person injured>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.1-14 Assault in the Third Degree (Reckless) -- § 53a-61 (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_\_] with assault in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the third degree when (he/she) recklessly causes serious physical injury to another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Recklessness

The first element is that the defendant acted recklessly. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<Insert Recklessness, Instruction 2.3-4.>*

### Element 2 - Caused serious physical injury

The second element is that the defendant's reckless acts caused serious physical injury to another person. This means that the defendant's conduct was the proximate cause of the person's injuries. You must find it proved beyond a reasonable doubt that *<insert name of person injured>* was injured as a result of the actions of the defendant. *<See Proximate Cause, Instruction 2.6-1.>*

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant acted recklessly, and 2) the defendant caused serious physical injury to *<insert name of person injured>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.1-15 Assault in the Third Degree (Deadly Weapon) -- § 53a-61 (a) (3)

Revised to April 23, 2010

The defendant is charged [in count \_\_\_\_] with assault in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the third degree when with criminal negligence, (he/she) causes physical injury to another person by means of a deadly weapon, a dangerous instrument or an electronic defense weapon.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Criminal negligence

The first element is that the defendant acted with criminal negligence. *<Insert Criminal Negligence, Instruction 2.3-5.>*

### Element 2 - Caused physical injury

The second element is that the defendant caused physical injury to another person. This means that the defendant's conduct was the proximate cause of the person's injuries. You must find it proved beyond a reasonable doubt that *<insert name of person injured>* was injured as a result of the actions of the defendant. *<See Proximate Cause, Instruction 2.6-1.>*

"Physical injury" is defined as impairment of physical condition or pain. It is a reduced ability to act as one would otherwise have acted. The law does not require that the injury be serious. It may be minor.

### Element 3 - Deadly weapon or dangerous instrument

The third element is that the injury was caused by means of (a deadly weapon / a dangerous instrument / an electronic defense weapon). *<Insert the appropriate definition:>*

- "Deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles. If the weapon is a firearm, it may be unloaded, but it must be in such condition that a shot may be discharged from it. Thus, if the weapon is loaded but not in working order, it is not a deadly weapon. If the weapon is unloaded but in working order, it is a deadly weapon.
- "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous

instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

- "Electronic defense weapon" is defined by statute as a weapon which by electronic impulse or current is capable of immobilizing a person temporarily, but is not capable of inflicting death or serious physical injury.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was criminally negligent, 2) the defendant caused physical injury to *<insert name of person injured >*, and 3) the defendant caused the injury by means of a (deadly weapon / dangerous instrument / electronic defense weapon).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.1-16 Assault of an Elderly, Blind, Disabled, Pregnant or Intellectually Disabled Person -- § 53a-59a, § 53a-60b, § 53a-60c, and § 53a-61a

Revised to May 10, 2012

**Note:** These offenses are based on underlying assault crimes against a certain class of victim. The degree of the offense depends on the degree of the underlying crime.

The defendant is charged [in count \_\_\_] with assault of (a/an) (elderly / blind / disabled / pregnant / intellectually disabled<sup>1</sup>) person [with a firearm] in the (first / second / third) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault of (a/an) (elderly / blind / disabled / pregnant / intellectually disabled) [with a firearm] in the (first / second / third) degree when such person commits assault [with a firearm] in the (first / second / third) degree and the person assaulted <insert as appropriate:>

- is at least sixty years of age.
- is blind.
- is physically disabled.
- is pregnant.
- is intellectually disabled, and the actor is not a person with intellectual disability.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### Element 1 - Committed assault

The first element is that the defendant committed assault [with a firearm] in the (first / second / third) degree. <Insert elements from instruction for the underlying crime:>

- § 53a-59 (a) (2): Assault in the First Degree (Maiming), Instruction 6.1-2.
- § 53a-59 (a) (3): Assault in the First Degree (Reckless Indifference), Instruction 6.1-3.
- § 53a-59 (a) (5): Assault in the First Degree (Discharge of a Firearm), Instruction 6.1-5.
- § 53a-60a: Assault in the Second Degree with a Firearm, Instruction 6.1-11.
- § 53a-61 (a) (1): Assault in the Third Degree (Physical Injury), Instruction 6.1-13.
- § 53a-61 (a) (2): Assault in the Third Degree (Reckless), Instruction 6.1-14.
- § 53a-61 (a) (3): Assault in the Third Degree (Deadly Weapon), Instruction 6.1-15.

### Element 2 - Status of complainant

The second element is that the person assaulted was, at the time, <insert as appropriate:>

- at least sixty years of age. The defendant did not have to know that the person was over sixty years of age.
- blind. For purposes of this offense, a person is "blind" if (his/her) central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if (his/her) visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty

degrees.<sup>2</sup> *<Insert any medical evidence.>* In addition, the defendant did not have to know that the person was blind.

- physically disabled. For purposes of this offense, a person is "physically disabled" if (he/she) has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic process or changes or from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device. Thus, it does not matter whether the person was born with the chronic physical handicap, infirmity or impairment, or if it resulted from bodily injury, organic processes or changes or illness.<sup>3</sup> In addition, the defendant did not have to know that the person was physically disabled.
- pregnant.
- intellectually disabled, and the person committing the assault was not a person with intellectual disability. For purposes of this offense, "intellectual disability" means a significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose and standardized on a significantly adequate population and administered by persons formally trained in test administration. "Significantly subaverage" means an intelligence quotient more than two standard deviations below the mean test. "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group. "Developmental period" means the period of time between birth and the eighteenth birthday.<sup>4</sup> *<Insert any evidence of general intellectual functioning and adaptive behavior.>*

### **[Affirmative defense**

*<Include if raised by the defendant:>*

The defendant has raised the affirmative defense that (he/she), at the time of the incident, did not know that *<insert name of complainant>* was (pregnant / intellectually disabled).

*<See Affirmative Defense, Instruction 2.9-1.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for the underlying crime>*, and that at the time of the assault, *<insert name of complainant>* was (at least sixty years of age / blind / physically disabled / pregnant / intellectually disabled).

*<Insert one of the following endings:>*

#### **If the defendant has not raised the affirmative defense**

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault of (a/an) (elderly / blind / physically disabled / pregnant / intellectually disabled) [with a firearm] in the (first / second / third) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

**If the defendant has raised the affirmative defense**

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of assault of (a pregnant / an intellectually disabled) person [with a firearm] in the (first / second / third) degree, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved by a preponderance of the evidence that (he/she) did not know that <insert name of complainant> was (pregnant / intellectually disabled), then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) defense by a preponderance of the evidence, then you shall find the defendant guilty.

---

<sup>1</sup> Public Acts 2011, No. 11-129, § 1, replaced the term "mental retardation" with "intellectual disability," effective October 1, 2011.

<sup>2</sup> General Statutes § 1-1f (a).

<sup>3</sup> General Statutes § 1-1f (b).

<sup>4</sup> General Statutes § 1-1g.

***Commentary***

See generally *State v. Campbell*, 180 Conn. 557, 562-64 (1980) (discussing the legislature's rationale for making assault on the elderly a distinct offense).

## 6.1-17 Assault of an Employee of the Department of Correction in the First Degree -- § 53a-59b

Revised to April 23, 2010

The defendant is charged [in count \_\_\_] with assaulting an employee of the department of correction. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault of an employee of the department of correction in the first degree when (he/she) is (in the custody of the commissioner of correction / confined in any institution or facility of the department of correction) and commits assault in the first degree on an employee of the department of correction acting in the performance of (his/her) duties.

For you to find the defendant guilty of this crime, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed assault in the first degree**

The first element is that the defendant committed the crime of assault in the first degree. *<Insert elements from the instruction for the underlying crime:>*

- **§ 53a-59 (a) (1):** Assault in the First Degree (Deadly Weapon or Dangerous Instrument), Instruction 6.1-1.
- **§ 53a-59 (a) (2):** Assault in the First Degree (Maiming), Instruction 6.1-2.
- **§ 53a-59 (a) (3):** Assault in the First Degree (Reckless Indifference), Instruction 6.1-3.
- **§ 53a-59 (a) (4):** Assault in the First Degree (Aided by Two or More Persons), Instruction 6.1-4.
- **§ 53a-59 (a) (5):** Assault in the First Degree (Discharge of a Firearm), Instruction 6.1-5.

### **Element 2 - DOC employee**

The second element is that the person assaulted was an employee of the department of correction acting in the performance of (his/her) duties. The phrase "in the performance of (his/her) duties" means that the person was acting within the scope of what (he/she) was employed to do, and that (his/her) conduct was related to (his/her) official duties. The question of whether (he/she) was acting in good faith in the performance of (his/her) duties is a factual question for you to determine on the basis of the evidence in the case. *<Summarize evidence if appropriate.>*

*<See commentary in Instruction 4.3-1 concerning interfering with an officer for additional analysis if necessary.>*

### **Element 3 - Defendant in custody or confined**

The third element is that at the time of the assault the defendant was (in the custody of the commissioner of correction / confined in any institution or facility of the department of correction). The term "in the custody of" means that the defendant is subject to restraint by the commissioner of correction by virtue of a court order. [A person who is on parole is still considered to be in the custody of the commissioner of correction.]

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for the underlying crime>*, and that at the time of the assault *<insert name of complainant>* was an employee of the department of correction acting in the performance of (his/her) duties and the defendant was (in the custody of the commissioner of correction / confined in any institution or facility of the department of correction).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault on an employee of the department of correction, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.1-18 Assault of a Pregnant Woman Resulting in Termination of Pregnancy -- § 53a-59c

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with assault of a pregnant woman resulting in termination of pregnancy. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault of a pregnant woman resulting in termination of pregnancy when such person commits assault in the first degree and the person assaulted is pregnant and the assault results in the termination of pregnancy that does not result in a live birth.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed assault in the first degree**

The first element is that the defendant committed assault in the first degree. *<Insert elements from the instruction for the underlying crime:>*

- § 53a-59 (a) (1): Assault in the First Degree (Deadly Weapon or Dangerous Instrument), Instruction 6.1-1.
- § 53a-59 (a) (2): Assault in the First Degree (Maiming), Instruction 6.1-2.
- § 53a-59 (a) (3): Assault in the First Degree (Reckless Indifference), Instruction 6.1-3.
- § 53a-59 (a) (4): Assault in the First Degree (Aided by Two or More Persons), Instruction 6.1-4.
- § 53a-59 (a) (5): Assault in the First Degree (Discharge of a Firearm), Instruction 6.1-5.

### **Element 2 - Person assaulted was pregnant**

The second element is that the person assaulted was pregnant at the time of the assault.

### **Element 3 - Resulted in termination of pregnancy**

The third element is that the assault resulted in the termination of pregnancy that did not result in a live birth. It does not matter whether the defendant intended to cause the termination of the pregnancy. The only intent required is the intent to *<insert intent requirement from the applicable first degree assault subsection.>*

### **[Affirmative defense**

*[<If raised by the defendant:>*

The defendant has raised the affirmative defense that (he/she), at the time of the incident, did not know that *<insert name of complainant>* was pregnant.

*<Insert Affirmative Defense, Instruction 2.10-1.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for the underlying crime>*, *<insert name of complainant>* was

pregnant at the time, and the assault resulted in the termination of the pregnancy that did not result in a live birth.

*<Insert one of the following endings:>*

**If the defendant has not raised the affirmative defense**

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault of a pregnant woman, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

**If the defendant has raised the affirmative defense**

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of assault of a pregnant woman, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved by a preponderance of the evidence that (he/she) did not know that *<insert name of complainant>* was pregnant, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) defense by a preponderance of the evidence, then you shall find the defendant guilty.

## 6.1-19 Assault in the Second Degree (Knockout) -- § 53a-60 (a) (6)

New, November 6, 2014

The defendant is charged [in count \_\_\_\_] with assault in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of assault in the second degree when, with intent to cause serious physical injury to another person by rendering such other person unconscious, and without provocation by such other person, (he/she) causes such injury to such other person by striking such other person on the head.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Intent to cause serious physical injury**

The first element is that the defendant intended to cause serious physical injury to a person by rendering that person unconscious. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 2 - Caused serious physical injury**

The second element is that the defendant in fact caused serious physical injury to a person by striking that person on the head. This means that the defendant's conduct was the proximate cause of the person's injuries. You must find it proved beyond a reasonable doubt that <insert name of person injured> was injured as a result of the actions of the defendant. <See *Proximate Cause, Instruction 2.6-1.*>

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

### **Element 3 - Without provocation**

The third element is that the defendant was not provoked by the other person.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant intended to cause serious physical injury to <insert name of person injured> by rendering (him/her) unconscious, 2) the defendant caused serious physical injury to <insert name of person injured> by striking (him/her) on the head, and 3) <insert name of person injured> did not provoke the defendant.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of assault in the second degree, then you shall find the defendant guilty. On the

other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary***

This offense was created by Public Acts 2014, No. 220, § 1, effective October 1, 2014.

## **6.2 THREATENING**

### **6.2-1 Threatening in the First Degree**

**(Intentional) -- § 53a-61aa (a) (1) (A) and (a) (2) (A)**

### **6.2-2 Threatening in the First Degree (Reckless)**

**-- § 53a-61aa (a) (1) (B) and (a) (2) (B)**

### **6.2-3 Threatening in the Second Degree -- § 53a-62**

### **6.2-4 Threatening in the First Degree (with a Firearm) -- § 53a-61aa (a) (3)**

## 6.2-1 Threatening in the First Degree (Intentional) -- § 53a-61aa (a) (1) (A) and (a) (2) (A)

Revised to June 12, 2009

The defendant is charged [in count \_\_\_] with threatening in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of threatening in the first degree when such person threatens to commit *<insert appropriate subsection:>*

- § 53a-61aa (a) (1) (A): any crime involving the use of a hazardous substance
  - § 53a-61aa (a) (2) (A): any crime of violence
- with the intent to *<insert as appropriate:>*
- terrorize another person.<sup>1</sup>
  - cause evacuation of a building, place of assembly or facility of public transportation.
  - cause serious public inconvenience.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Threatened to commit a crime

The first element is that the defendant threatened to commit (any crime involving the use of a hazardous substance / any crime of violence). *<Insert appropriate definition:>*

- A hazardous substance is any physical, chemical, biological or radiological substance or matter which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health.
- A crime of violence is one in which physical force is exerted for the purpose of violating, injuring, damaging, or abusing person or property.

A threat can only be punishable when it is a true threat, that is, a threat that a reasonable person would understand as a serious expression of an intent to harm or assault, and not as mere puffery, bluster, jest or hyperbole. In determining whether the threat is a true threat, consider the particular factual context in which the allegedly threatening conduct occurred which could include the reaction of the person allegedly being threatened and the defendant's conduct before and after the allegedly threatening conduct.<sup>2</sup>

### Element 2 - Intent

The second element is that the defendant had the specific intent with this threat to (terrorize another person / cause evacuation of a building, place of assembly or facility of public transportation / cause serious public inconvenience). [To terrorize means to cause intense fear or apprehension.<sup>3</sup>]

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant threatened to commit (any crime involving the use of a hazardous substance / any crime of violence), and 2) (he/she) specifically intended to (terrorize another person / cause evacuation of a building, place of assembly or facility of public transportation / cause serious public inconvenience).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of threatening in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The element "to terrorize another person" is only applicable when the crime threatened is one involving the use of a hazardous substance.

<sup>2</sup> See *State v. DeLoreto*, 265 Conn. 145, 154 (2003); *State v. Crudup*, 81 Conn. App. 248, 260, cert. denied, 268 Conn. 913 (2004).

<sup>3</sup> *State v. Dyson*, 238 Conn. 784, 798-99 (1996).

## 6.2-2 Threatening in the First Degree (Reckless) -- § 53a-61aa (a) (1) (B) and (a) (2) (B)

Revised to June 12, 2009

The defendant is charged [in count \_\_\_] with threatening in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of threatening in the first degree when such person threatens to commit *<insert appropriate subsection:>*

- § 53a-61aa (a) (1) (B): any crime involving the use of a hazardous substance
  - § 53a-61aa (a) (2) (B): any crime of violence
- in reckless disregard of the risk of *<insert as appropriate:>*
- terrorizing another person.<sup>1</sup>
  - causing evacuation of a building, place of assembly or facility of public transportation.
  - causing serious public inconvenience.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Threatened to commit a crime

The first element is that the defendant threatened to commit (any crime involving the use of a hazardous substance / any crime of violence). *<Insert appropriate definition:>*

- A hazardous substance is any physical, chemical, biological or radiological substance or matter which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health.
- A crime of violence is one in which physical force is exerted for the purpose of violating, injuring, damaging, or abusing person or property.

A threat can only be punishable when it is a true threat, that is, a threat that a reasonable person would understand as a serious expression of an intent to harm or assault, and not as mere puffery, bluster, jest or hyperbole. In determining whether the threat is a true threat, consider the particular factual context in which the allegedly threatening conduct occurred which could include the reaction of the person allegedly being threatened and the defendant's conduct before and after the allegedly threatening conduct.<sup>2</sup>

### Element 2 - Recklessness

The second element is that the defendant acted in reckless disregard of the risk that this threat would (terrorize another person / cause evacuation of a building, place of assembly or facility of public transportation / cause serious public inconvenience). [To terrorize means to cause intense fear or apprehension.<sup>3</sup>]

A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant threatened to commit (any crime involving the use of a hazardous substance / any crime of violence), and 2) (he/she) acted with reckless disregard of the risk of (terrorizing another person / causing evacuation of a building, place of assembly or facility of public transportation / causing serious public inconvenience).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of threatening in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The element "to terrorize another person" is only applicable when the crime threatened is one involving the use of a hazardous substance.

<sup>2</sup> See *State v. DeLoreto*, 265 Conn. 145, 154 (2003); *State v. Crudup*, 81 Conn. App. 248, 260, cert. denied, 268 Conn. 913 (2004).

<sup>3</sup> *State v. Dyson*, 238 Conn. 784, 798-99 (1996).

## 6.2-3 Threatening in the Second Degree -- § 53a-62

Revised to June 12, 2009

The defendant is charged [in count \_\_\_] with threatening in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of threatening in the second degree when *<insert appropriate subsection:>*

- **§ 53a-62 (a) (1):** that person, by physical threat, intentionally places or attempts to place another person in fear of imminent serious physical injury.
- **§ 53a-62 (a) (2):** that person threatens to commit any crime of violence with the intent to terrorize another person.
- **§ 53a-62 (a) (3):** that person threatens to commit any crime of violence in reckless disregard of the risk of terrorizing another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Made a threat

The first element is that the defendant *<insert as appropriate:>*

- **§ 53a-62 (a) (1):** made a physical threat to another person. A threat is the expression of an intention to injure another person. A physical threat is a threat accompanied by some action, such as words accompanied by a threatening gesture. A physical threat may also occur if the defendant expresses the threat in the person's presence and has the apparent ability to carry out (his/her) threat. Mere words are insufficient to constitute a physical threat; the defendant must also indicate by (his/her) actions an intent or an ability physically to carry out that threat. The conduct of a person, even without words, may be sufficient to cause fear in another person.
- **§ 53a-62 (a) (2) or § 53a-62 (a) (3):** threatened to commit a crime of violence. A crime of violence is one in which physical force is exerted for the purpose of violating, injuring, damaging, or abusing another person. The state must prove that the defendant behaved in a manner that indicated (his/her) intent to commit such a crime.

A threat can only be punishable when it is a true threat, that is, a threat that a reasonable person would understand as a serious expression of an intent to harm or assault, and not as mere puffery, bluster, jest or hyperbole. In determining whether the threat is a true threat, consider the particular factual context in which the allegedly threatening conduct occurred which could include the reaction of the person allegedly being threatened and the defendant's conduct before and after the allegedly threatening conduct.<sup>1</sup>

### Element 2 - Intent

The second element is that the defendant *<insert as appropriate:>*

- **§ 53a-62 (a) (1):** intended by (his/her) conduct to put that person in fear of imminent serious physical injury. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction*

2.3-1.> "Serious physical injury" means physical injury that creates a substantial risk of death, or that causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. "Imminent" means impending or likely to occur immediately. It is not the danger or risk of injury, but the person's perception that is essential to this crime. The state must prove beyond a reasonable doubt that the defendant intended to place the other person in fear of imminent and serious physical injury.

- **§ 53a-62 (a) (2):** intended to terrorize another person. To terrorize means to cause intense fear or apprehension.<sup>2</sup> A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>
- **§ 53a-62 (a) (3):** acted in reckless disregard of the risk of causing terror to another person. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant threatened (another person / to commit any crime of violence), and 2) the defendant (intended to put <insert name of person> in fear of imminent serious physical injury / intended to terrorize <insert name of person> / acted in reckless disregard of the risk of causing terror to <insert name of person>).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of threatening in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See *State v. DeLoreto*, 265 Conn. 145, 154 (2003); *State v. Crudup*, 81 Conn. App. 248, 260, cert. denied, 268 Conn. 913 (2004).

<sup>2</sup> *State v. Dyson*, 238 Conn. 784, 798-99 (1996).

### **Commentary**

"[T]hreatening . . . requires the state to show that the defendant, by physical threat, intentionally placed or attempted to place another person in fear of imminent serious physical injury. It is not the danger or risk of injury, but the victim's perception, which is essential to the . . . crime." *State v. Gibson*, 75 Conn. App. 103, 122-23 (2003), aff'd in part, rev'd in part on other grounds, 270 Conn. 55 (2004).

"A threat does not require immediate menace of violence or acts showing a present ability and will to execute the threat. . . . A threat imports the expectation of bodily harm, thereby inducing fear and apprehension in the person threatened. A threat, unlike an assault, is not limited by time or distance." (Internal quotation marks omitted.) *Id.*, 123-24. It is the defendant's present ability to harm the victim that amounts to "imminent." "A threat is always

an indication of probable evil to come, whether at once or at some uncertain time in the future." *State v. Snead*, 41 Conn. App. 584, 593-94 (1996).

Threatening is not a lesser included offense of attempted murder. *State v. Jacobiwitz*, 182 Conn. 585, 592-93 (1981), overruled on other grounds, *State v. Welch*, 224 Conn. 1 (1992); *State v. Palmer*, 8 Conn. App. 496, cert. denied, 201 Conn. 808 (1986). "It is not the danger or risk of injury, but the victim's perception, which is essential to [the crime of threatening]. . . . [A]ttempted murder does not require placing in fear, and it is possible to imagine an attempted murder, such as a shot from ambush, in which there has been no prior threatening act." *State v. Jacobiwitz*, supra, 182 Conn. 592-93.

## 6.2-4 Threatening in the First Degree (with a Firearm) -- § 53a-61aa (a) (3)

New, November 6, 2014

The defendant is charged [in count \_\_\_\_] with threatening in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of threatening in the first degree when (he/she) commits threatening in the second degree, and in the commission of such offense (he/she) (uses / is armed with and threatens the use of / displays or represents by (his/her) words or conduct that (he/she) possesses) a pistol, revolver, machine gun, shotgun, rifle or other firearm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed threatening in the second degree**

The first element is that the defendant committed threatening in the second degree. *<Insert the elements from Threatening in the Second Degree, Instruction 6.2-3.>*

### **Element 2 - With a firearm**

The second element is that in the commission of the assault the defendant *<insert as appropriate:>*<sup>1</sup>

- used a firearm.
- was armed with and threatened the use of a firearm.
- displayed or represented by (his/her) words or conduct that (he/she) possessed a firearm. [It is not required that what the defendant represents to be a firearm be loaded or that the defendant actually have a firearm. It need only be represented by words or conduct that (he/she) is so armed.]

*<Describe specific allegations regarding firearm.>* "Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>2</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from Threatening in the Second Degree, Instruction 6.2-3>*, and that in the commission of the threatening the defendant (used / threatened the use of / displayed or represented that (he/she) had) a firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of threatening in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Carefully tailor this part of the instruction according to the nature of the conduct alleged and the type of firearm involved. See *State v. Tomlin*, 266 Conn. 608, 626-27 (2003) (allegation of "did shoot" only supported instructing on the first of three distinct methods of committing the offense).

<sup>2</sup> See definitions for machine gun, rifle, shotgun, pistol or revolver in the glossary.

***Commentary***

This offense was added by P.A. No. 11-114, § 10, effective January 1, 2012.

"No person shall be found guilty of threatening in the first degree under subdivision (3) of [§ 53a-61aa] and threatening in the second degree upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information." General Statutes § 53a-61aa (a).

## **6.3 RECKLESS ENDANGERMENT**

**6.3-1 Reckless Endangerment in the First Degree**

**-- § 53a-63**

**6.3-2 Reckless Endangerment in the Second**

**Degree -- § 53a-64**

## 6.3-1 Reckless Endangerment in the First Degree -- § 53a-63

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with reckless endangerment in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of reckless endangerment in the first degree when, with extreme indifference to human life, (he/she) recklessly engages in conduct which creates a risk of serious physical injury to another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - With extreme indifference to human life**

The first element is that the defendant acted with extreme indifference to human life.

"Indifference" means simply not caring. It means lacking any interest in a matter one way or the other. Extreme means existing in the highest or greatest possible degree. Extreme indifference is more than ordinary indifference. It is synonymous with excessive and is the greatest departure from the ordinary. What evinces an extreme indifference to human life is a question of fact.

### **Element 2 - Acted recklessly**

The second element is that the defendant acted recklessly. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist.

<See *Recklessness, Instruction 2.3-4.*>

### **Element 3 - Created risk of serious physical injury**

The third element is that the defendant's recklessness created a risk of causing serious physical injury to another person. "Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ." It is unnecessary for any person to have been injured by the defendant's conduct or for the defendant to have intended to injure or endanger any person.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant acted with extreme indifference to human life, 2) the defendant's conduct was reckless, and 3) the defendant posed a risk of causing serious physical injury to another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of reckless endangerment in the first degree, then you shall find the defendant

guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.3-2 Reckless Endangerment in the Second Degree -- § 53a-64

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with reckless endangerment in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of reckless endangerment in the second degree when (he/she) recklessly engages in conduct which creates a risk of physical injury to another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Acted recklessly**

The first element is that the defendant acted recklessly. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

### **Element 2 - Created risk of physical injury**

The second element is that the defendant's recklessness created a risk of causing physical injury to another person.<sup>1</sup> "Physical injury" means impairment of physical condition or pain.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant acted recklessly, and 2) created a risk of causing physical injury to another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of reckless endangerment in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> There has to be proof that another person was actually put at risk of physical injury. *State v. Thomas*, 56 Conn. App. 573, 578, cert. denied, 252 Conn. 953 (2000) (defendant shot a pistol into the ground, but there was no evidence of the presence of other people in the vicinity).

### **Commentary**

Reckless endangerment in the second degree is not a lesser included offense of assault in the first degree. *State v. Fuller*, 56 Conn. App. 592, 603-604, cert. denied, 252 Conn. 949, cert. denied, 531 U.S. 911, 121 S. Ct. 262, 148 L. Ed. 2d 190 (2000).

Reckless endangerment in the second degree, General Statutes § 53a-64, and reckless driving, General Statutes § 14-222 (a), are separate offenses. "Reckless endangerment involves a risk of physical injury, and reckless driving involves endangering the life of another person.

Reckless driving is limited to conduct solely involving the use of a motor vehicle. Reckless endangerment is not so limited." *State v. Rudd*, 62 Conn. App. 702, 710 (2001).

## **6.4 ROBBERY**

### **6.4 Introduction to Robbery**

**6.4-1 Robbery in the First Degree -- § 53a-134**

**6.4-2 Robbery in the Second Degree -- § 53a-135  
(a) (1)**

**6.4-3 Robbery in the Third Degree -- §§ 53a-133  
and 53a-136**

**6.4-4 Carjacking -- § 53a-136a**

**6.4-5 Robbery in the Second Degree (in a Bank  
or Credit Union) -- § 53a-135 (a) (2)**

## 6.4 Introduction to Robbery

Revised to May 20, 2011

Simple robbery is defined in § 53a-133 as a larceny committed with the use or threatened use of physical force. An instruction defining robbery that fails to include the definition of larceny is technically incomplete. *State v. Flowers*, 69 Conn. App. 57, 70, cert. denied, 260 Conn. 929 (2002). Simple robbery is robbery in the third degree pursuant to § 53a-136. First and second degree robbery are simple robbery with additional elements.

### ***Intent to commit larceny***

The intent of robbery is the intent to commit larceny; physical force is the means by which larceny is committed. *State v. Leggett*, 94 Conn. App. 392, 402-403 n.14, cert. denied, 278 Conn. 911 (2006). The aggravating factors in robbery have no separate intent requirement. *State v. Rice*, 25 Conn. App. 646, 648-49 (1991).

### ***In the course of***

"It is well established that, under General Statutes § 53-133, if the use of force occurs during the continuous sequence of events surrounding the taking or attempted taking, even though some time immediately before or after, it is considered to be 'in the course of' the robbery or the attempted robbery within the meaning of the statute." *State v. Ghery*, 201 Conn. 289, 297 (1986) (assault occurred subsequent to the demand for money); *State v. Wallace*, 56 Conn. App. 730, 740-42, cert. denied, 253 Conn. 901 (2000) (discussing when subsequent use of force occurs after the completion of the larceny); *State v. Channer*, 28 Conn. App. 161, 169-73, cert. denied, 223 Conn. 921 (1992) (in the course of the commission of the crime would occur after the defendant or a coparticipant has taken some step in fulfillment of the intent to commit the crime").

### ***Uses or threatens the use of physical force***

The threat of physical force need not be explicitly uttered. It may be implied. *State v. Littles*, 31 Conn. App. 47, 54, cert. denied, 227 Conn. 902 (1993) ("threat" has its ordinary meaning which does not require that a threat be explicitly uttered). "An implied threat is as effective as a stated threat, especially when the apparent ability to carry out the threat is overwhelming." *Id.*

"Both subdivisions (1) and (2) of General Statutes § 53a-133 refer to the defendant's purpose in using or threatening force. . . . These two states of mind are hardly conceptually distinct from each other. . . . Both states of mind [involve] an intent to force or intimidate the victims to yield their property so as to permit its taking or retention by the defendant." (Internal quotation marks omitted.) *State v. Torres*, 82 Conn. App. 823, 834, cert. denied, 270 Conn. 909 (2004); *State v. Brown*, 60 Conn. App. 487, 493 (2000); *State v. Reyes*, 19 Conn. App. 695, 705, cert. denied, 213 Conn. 803 (1989).

### ***Multiple victims***

"[W]hen a robbery involves multiple victims, the state properly may charge a defendant with a separate count of robbery for each of the victims, or with a single count of robbery for all the victims." *State v. Flores*, 301 Conn. 77, 99 (2011). If the state elects to charge a single count of robbery, it only has to prove that one person was robbed. *Id.*

### ***Lesser included offenses***

Simple robbery, as defined in § 53a-133 and applied in § 53a-136 (third degree), must be proved before robbery in the first or second degree is established. See *State v. Ghery*, 201 Conn. 289, 297 (1986). "[A] defendant cannot be convicted of robbery in the first degree without first committing a robbery." *State v. Latorre*, 51 Conn. App. 541, 546 (1999).

"It is clear that the essential difference between §§ 53a-134 (a) (4) [robbery in the first degree] and 53a-135 (a) (2) [robbery in the second degree] is the type of weapon used. The former is limited to firearms; the latter includes firearms but is not limited to them." *State v. Gebeau*, 55 Conn. App. 795, 799 (1999), cert. denied, 252 Conn. 922 (2000). Therefore, "[f]or the defendant to have been entitled to a charge on the proposed lesser included offense of robbery in the second degree, there must have been some dispute as to the essential differentiating element, use of a firearm, so that he could have been acquitted of the greater offense and convicted of the lesser." *Id.* See *State v. Harris*, 189 Conn. 268, 274-75 (1983) (proof of the operability of the gun was sufficiently in dispute); see also *State v. Preston*, 248 Conn. 472, 478-79 (1999) (defendant not entitled to a lesser included offense instruction of larceny in the sixth degree, because his use of force for a purpose defined in § 53a-133 was not sufficiently in dispute); *State v. Tinsley*, 181 Conn. 388, 399-400 (1980), cert. denied, 449 U.S. 1086, 101 S.Ct. 874, 66 L.Ed.2d 811 (1981), overruled on other grounds, *State v. Pinnock*, 220 Conn. 765, 788 (1992) (defendant not entitled to instruction on robbery because it was not sufficiently in dispute whether he was armed or not).

Simple robbery and larceny from the person are separate crimes. *State v. Wright*, 246 Conn. 132, 142 (1998). In *Wright*, the Court rejected the defendant's claim under substantive due process that larceny from the person (a C felony) is a less serious crime than simple robbery (a D felony), because even though both crimes are aggravated forms of larceny, "the trespass to the person of the victim . . . that inheres in larceny from the person potentially is a source of greater harm than the force or threat of force that characterizes a simple robbery." *Id.*, 145-46.

### ***Sentence enhancer: Carjacking***

General Statutes § 53a-136a provides an enhanced penalty for a robbery involving an occupied motor vehicle. "Carjacking" is not a separate crime. See *State v. Edwards*, 100 Conn. App. 565, 596, cert. denied, 282 Conn. 928, and cert. denied, 282 Conn. 929 (2007). The statute provides an enhanced penalty for "any person who commits robbery by taking a motor vehicle from the person of another knowing that such motor vehicle is occupied by such other person."

"Taking" is not defined in the Penal Code, so courts have applied its ordinary meaning. "A criminal taking is '[t]he act of seizing an article, with or without removing it, but with an implicit transfer of possession or control.'" Black's Law Dictionary (7th ed. 1999). Thus, to prove that the defendant took the victim's vehicle, the state needed to establish that the defendant seized the vehicle from the victim's power and control." *State v. Toro*, 62 Conn. App. 635, 642, cert. denied, 256 Conn. 923 (2001).

That a motor vehicle was taken from another person under the conditions of this statute is a factual finding for the jury to make. This is best accomplished by way of an interrogatory. See Sentence Enhancers, Instruction 2.11-4.

## 6.4-1 Robbery in the First Degree -- § 53a-134

Revised to May 10, 2012

The defendant is charged [in count \_\_\_] with robbery in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of robbery in the first degree when, in the course of the commission of the crime of robbery or of immediate flight therefrom, (he/she) or another participant in the crime *<insert appropriate subsection:>*

- § 53a- 134 (a) (1): causes serious physical injury to any person who is not a participant in the crime.
- § 53a- 134 (a) (2): is armed with a deadly weapon.
- § 53a- 134 (a) (3): uses or threatens the use of a dangerous instrument.
- § 53a- 134 (a) (4): displays or threatens the use of what (he/she) represents by (his/her) words or conduct to be a pistol, revolver, rifle, shotgun, machine gun or other firearm."

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Committed robbery

The first element is that the defendant committed a robbery. *<Insert the elements from Robbery in the Third Degree, Instruction 6.4-3.>*

### Element 2 - Additional factor

The second element is that in the course of the commission of the robbery or immediate flight from the crime, the defendant or another participant in the crime *<insert as appropriate:>*

- § 53a- 134 (a) (1): caused serious physical injury to any person who was not a participant in the crime. "Serious physical injury" means more than "physical injury," which is defined as impairment of physical condition or pain. It is more than a minor or superficial injury. It is defined by statute as physical injury that creates a substantial risk of death, or that causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ.
- § 53a- 134 (a) (2): was armed with a deadly weapon. "Deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles. If the weapon is a firearm, it may be unloaded, but it must be in such condition that a shot may be discharged from it. Thus, if the weapon is loaded but not in working order, it is not a deadly weapon. If the weapon is unloaded but in working order, it is a deadly weapon. The word "armed" simply requires that the weapon be in the defendant's possession.
- § 53a- 134 (a) (3): used or threatened the use of a dangerous instrument. "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the

article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

- **§ 53a- 134 (a) (4):** displayed or threatened the use of what (he/she) represented by words or conduct to be a pistol, revolver, rifle, shotgun, machine gun or other firearm. It is not required that the defendant actually have such a weapon. (He/She) need only represent by words or conduct that (he/she) is so armed to be guilty of the crime of robbery in the first degree. It is sufficient if the other person is made to believe that the object is such a weapon or if the defendant holds or wraps the object in such a way as to create the impression that (he/she) is holding a firearm.

"Immediate flight" means that it occurred so close in point of time to the commission of the robbery as to become part of the robbery. The law does not require that the (weapon / dangerous instrument) be used or employed for any particular purpose or object.

[<Include if there were multiple participants in the robbery:> If any person who participated in the crime (caused serious physical injury / was armed with a deadly weapon / used or threatened to use a dangerous instrument / displayed or threatened the use of what (he/she) represented by words or conduct to be a pistol, revolver, rifle, shotgun, machine gun or other firearm) while in immediate flight from the crime, then all participants in the robbery would be just as guilty of first degree robbery as if they had themselves actually done so.<sup>1</sup>]

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that <insert the concluding summary from the instruction for robbery in the third degree>, and that <insert the additional factor>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of robbery in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The language of § 53a-134 ("or another participant in the crime") "applies to principals and accessories on its face, so the court need not explain the concept of accessorial liability as it relates to the robbery charge." *State v. Davis*, 255 Conn. 782, 791 n.8 (2001).

### **Commentary**

#### ***Armed with a deadly weapon***

Under subsection (a) (2), "it is not necessary for a weapon to be exhibited, displayed or referred to in order for a person to be considered 'armed.' The word 'armed' simply requires that

a weapon be in that person's possession." *State v. Tinsley*, 181 Conn. 388, 399-400 (1980), cert. denied, 449 U.S. 1086, 101 S.Ct. 874, 66 L.Ed.2d 811 (1981), overruled on other grounds, *State v. Pinnock*, 220 Conn. 765, 788 (1992). Under subsection (a) (2), the state must prove that the firearm used was, in fact, a deadly weapon, capable of firing a shot, but not that the defendant actually discharged it. *State v. Torres*, 24 Conn. App. 316, 325, cert. denied, 218 Conn. 911 (1991).

#### ***Uses or threatens to use a dangerous instrument***

Under subsection (a) (3), the defendant must have used or threatened the use of a dangerous instrument. See *State v. Dumas*, 54 Conn. App. 780, 786-87, cert. denied, 252 Conn. 903 (1999) (knife used was capable of causing death or serious physical injury). "That the victim did not feel threatened by the stick is . . . irrelevant, particularly since the stick was actually used. Furthermore, it is not necessary, under either the definition of first degree robbery or under the definition of a dangerous instrument, that any physical injury actually have been inflicted. It was only necessary that the stick have been 'under the circumstances in which it [was] used . . . capable of causing death or serious physical injury.' We cannot state as a matter of law that a hockey stick when used to hit an elderly man is not a dangerous weapon." *State v. Jones*, 173 Conn. 91, 95 (1977).

#### ***Displays or threatens what is represented as a firearm***

Under subsection (a) (4), the defendant must have represented by words or conduct that he or she had a firearm. A defendant need not actually have a firearm. See *State v. Sparks*, 39 Conn. App. 502, 512-14 (1995); *State v. Lanier*, 39 Conn. App. 478, 483-85, cert. denied, 235 Conn. 931 (1995). "In determining whether the defendant threatened to use what he represented by words or conduct to be a firearm, the test is not whether the defendant actually had a firearm . . . but whether he displayed or threatened the use of what he represented by his conduct to be a firearm." (Internal quotation marks omitted.) *State v. St. Pierre*, 58 Conn. App. 284, 288, cert. denied, 254 Conn. 916 (2000).

This subsection does not require the state to prove that any firearm displayed be operable, because it does not require that the defendant actually have a gun at all. *State v. Hawthorne*, 175 Conn. 569, 573 (1978). However, the subsection contains an affirmative defense that such pistol, revolver, rifle, shotgun, machine gun or other firearm was not a weapon from which a shot could be discharged," which is similar to the affirmative defense found in § 53a-16a. If the defendant raises this defense, see Inoperability of Firearm, Instruction 2.9-3.

#### ***Sentence Enhancer***

General Statutes § 53a-136a provides a sentence enhancement if the robbery involved a carjacking. See Sentence enhancer: Carjacking in the Introduction to Robbery.

## 6.4-2 Robbery in the Second Degree -- § 53a-135 (a) (1)

Revised to May 23, 2013

The defendant is charged [in count \_\_\_] with robbery in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of robbery in the second degree when (he/she) commits robbery and  
<insert appropriate subsection:>

- **§ 53-135 (a) (1) (A):** (he/she) is aided by another person actually present.
- **§ 53-135 (a) (1) (B):** in the course of the commission of the crime or of immediate flight therefrom (he/she) or another participant in the crime displays or threatens the use of what (he/she) represents by (his/her) words or conduct to be a deadly weapon or a dangerous instrument.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed robbery**

The first element is that the defendant committed a robbery. <Insert the elements from Robbery in the Third Degree, Instruction 6.4-3.>

### **Element 2 - Additional factor**

The second element is that <insert as appropriate:>

- **§ 53-135 (a) (1) (A):** the defendant was aided by another person actually present. To find that the defendant was aided by another person actually present, an accomplice must be found to be present and actively aiding or assisting in the crime. Mere presence of an inactive companion, passive acquiescence, or the doing of innocent acts that may in fact aid the one who commits the crime, does not constitute such aid within the meaning of the statute.
- **§ 53-135 (a) (1) (B):** in the course of the commission of the crime or of immediate flight from the crime (he/she) or another participant in the crime displayed or threatened the use of what (he/she) represented by words or conduct to be a deadly weapon or dangerous instrument. This does not require that the defendant or participant in fact had a deadly weapon or a dangerous instrument, but had an article or instrument that (he/she) represented as such.

"Deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles. If the weapon is a firearm, it may be unloaded, but it must be in such condition that a shot may be discharged from it. Thus, if the weapon is loaded but not in working order, it is not a deadly weapon. If the weapon is unloaded but in working order, it is a deadly weapon. The word "armed" simply requires that the weapon be in the defendant's possession.

"Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for robbery in the third degree>*, and that (he/she) (was aided by another person actually present / displayed or threatened the use of what was represented as a deadly weapon or dangerous instrument).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of robbery in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

#### ***Sentence Enhancer***

General Statutes § 53a-136a provides a sentence enhancement if the robbery involved a carjacking. See Sentence enhancer: Carjacking in the Introduction to Robbery.

## 6.4-3 Robbery in the Third Degree -- § 53a-133 and § 53a-136

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with robbery in the third degree. The statutes<sup>1</sup> defining this offense read in pertinent part as follows:

a person is guilty of robbery in the third degree when (he/she), in the course of committing a larceny, uses or threatens the immediate use of physical force upon another person for the purpose of: *<insert appropriate subsection:>*

- § 53a-133 (1): preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking.
- § 53a-133 (2): compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - In the course of a larceny**

The first element is that the defendant was committing a larceny. Larceny is a separate offense, which has two elements. The statute defining larceny reads in pertinent part as follows: "A person commits larceny when, with intent to deprive another of property or to appropriate the same to (himself/herself) or a third person, (he/she) wrongfully takes, obtains or withholds such property from an owner." Larceny simply means theft or stealing.

To prove that the defendant was committing larceny, the state must prove beyond a reasonable doubt that 1) the defendant wrongfully (took property/ obtained property / withheld property) from an owner, and 2) that at the time (he/she) intended to deprive the owner of the property or to appropriate such property to (himself/herself) or a third person.

*<See Larceny, Instruction 9.1-1.>*

### **Element 2 - Use of physical force**

The second element is that the larceny was accomplished by the use or threatened use of physical force. "Physical force" means the external physical power over the person, which can be effected by hand or foot or another part of the defendant's body applied to the other person's body or applied by an implement, projectile or weapon. The gist of robbery, then, is the commission of larceny by the use of physical force or the threat of immediate use of physical force. Physical force may take many forms. If you find that no actual physical force was inflicted upon the other person, but the other person was threatened with physical force, you must also find, to return a verdict of guilty, that the defendant threatened the other person with the immediate use of physical force.

If you find that the defendant used physical force or threatened its immediate use in the course of committing a larceny, you must then determine whether such physical force was used or threatened for the purpose of *<insert as appropriate:>*<sup>2</sup>

- preventing or overcoming resistance to the taking of property or to the retention of property immediately after the taking.
- compelling the owner of the property or another person to deliver up the property or to engage in other conduct that aids in the commission of larceny.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was committing a larceny, and 2) that (he/she) (used physical force / threatened the use of physical force) for the purpose of (preventing or overcoming resistance to the taking of property or to the retention of property immediately after the taking / compelling the owner of the property or another person to deliver up the property or to engage in other conduct that aids in the commission of larceny).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of robbery in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-136 defines robbery in the third degree simply as "robbery as defined in section 53a-133." This definition thus combines the two statutory definitions to avoid redundancy.

<sup>2</sup> See *State v. Williams*, 202 Conn. 349, 361-65 (1987) (do not instruct on both subsections unless the evidence supports both).

### ***Commentary***

#### ***Sentence Enhancer***

General Statutes § 53a-136a provides a sentence enhancement if the robbery involved a carjacking. See Sentence enhancer: Carjacking in the Introduction to Robbery.

## 6.4-4 Carjacking -- § 53a-136a

Revised to December 1, 2007

**Note:** There is no instruction for this statute.

### *Commentary*

General Statutes § 53a-136a is a sentence enhancement, rather than a separate offense. *State v. Edwards*, 100 Conn. App. 565, 596, cert. denied, 282 Conn. 928, and cert. denied, 282 Conn. 929 (2007). See Sentence enhancer: Carjacking in the Introduction to Robbery.

## 6.4-5 Robbery in the Second Degree (in a Bank or Credit Union) -- § 53a-135 (a) (2)

New, May 23, 2013

The defendant is charged [in count \_\_\_] with robbery in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of robbery in the second degree when in the course of committing a larceny while on the premises of a [bank / Connecticut credit union / federal credit union], intimidates an employee of the [bank / Connecticut credit union / federal credit union] by intentionally engaging in conduct that causes another person to reasonably fear for his or her physical safety or the physical safety of another for the purpose of <insert appropriate subsection:>

- § 53a- 134 (a) (2) (A): preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking of the property.
- § 53a- 134 (a) (2) (B): compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Committed larceny

The first element is that the defendant committed larceny. <Insert the elements from Larceny, Instruction 9.1-1.>

### Element 2 - On premises of bank or credit union

The second element is that the larceny occurred on the premises of a bank or credit union. <Insert appropriate definition:>

- "Bank" means a Connecticut bank or a federal bank.<sup>1</sup>
- "Connecticut credit union" means a cooperative, nonprofit financial institution that (A) is organized under the Connecticut Credit Union Act and the membership of which is limited as provided by that act, (B) operates for the benefit and general welfare of its members with the earnings, benefits or services offered being distributed to or retained for its members, and (C) is governed by a volunteer board of directors elected by and from its membership.<sup>2</sup>
- "Federal credit union" means any institution chartered or organized as a federal credit union pursuant to the laws of the United States having its principal office in this state.<sup>3</sup>

### Element 3 - Intimidated an employee

The third element is that the defendant intimidated an employee of the (bank / credit union) by intentionally engaging in conduct that causes another person to reasonably fear for his or her physical safety or the physical safety of another for the purpose of:

- **§ 53-135 (a) (2) (A):** preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking of the property.
- **§ 53-135 (a) (2) (B):** compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant committed larceny, 2) the larceny was committed on the premises of a bank or credit union, and 3) the defendant intimidated an employee of the (bank / credit union).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of robbery in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 36a-2 (4).

<sup>2</sup> General Statutes § 36a-2 (13).

<sup>3</sup> General Statutes § 36a-2 (30).

### ***Commentary***

This offense was added by P.A. No. 11-186, § 1, effective January 1, 2012.

## **6.5 KIDNAPPING AND UNLAWFUL RESTRAINT**

### **6.5 Introduction to Kidnapping and Unlawful Restraint**

**6.5-1 Kidnapping in the First Degree (Ransom) -- § 53a-92 (a) (1)**

**6.5-2 Kidnapping in the First Degree -- § 53a-92 (a) (2)**

**6.5-3 Kidnapping in the Second Degree -- § 53a-94**

**6.5-4 Kidnapping with a Firearm -- § 53a-92a and § 53a-94a**

**6.5-5 Unlawful Restraint in the First Degree -- § 53a-95**

**6.5-6 Unlawful Restraint in the Second Degree -- § 53a-96**

## 6.5 Introduction to Kidnapping and Unlawful Restraint

Revised to November 1, 2008

In *State v. Salamon*, 287 Conn. 509 (2008), the Supreme Court announced a reinterpretation of the statute defining second degree kidnapping, General Statutes § 53a-94. The Court's new view of the meaning of "abduct," embodied in that statute, eliminates from the scope of kidnapping restraints that are incidental to the commission of other crimes. Distinguishing the statutory definitions of "abduct" and "restrain" by the inclusion in the former of an "intent to prevent a person's liberation," the Court concluded that in order to establish an abduction in conjunction with another crime, the state must prove that a defendant intended "to prevent the victim's liberation for a longer period of time or to a greater degree than that which is necessary to commit the other crime." *Id.*, 542.

The Court emphasized that this holding did not alter the basic underpinnings of its prior kidnapping jurisprudence. "First, in order to establish a kidnapping, the state is not required to establish any minimum period of confinement or degree of movement. When that confinement or movement is merely incidental to the commission of another crime, however, the confinement or movement must have exceeded that which was necessary to commit the other crime." *Id.*, 546. "Second, we do not retreat from the general principle that an accused may be charged with and convicted of more than one crime arising out of the same act or acts, as long as all of the elements of each crime are proven. Indeed, because the confinement or movement of a victim that occurs simultaneously with or incidental to the commission of another crime ordinarily will constitute a substantial interference with that victim's liberty, such restraints still may be prosecuted under the unlawful restraint statutes." *Id.*, 548.

See also *State v. Sanseverino*, 287 Conn. 608 (2008), and *State v. DeJesus*, 288 Conn. 418 (2008).

## 6.5-1 Kidnapping in the First Degree (Ransom) -- § 53a-92 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with kidnapping in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of kidnapping in the first degree when (he/she) abducts another person and (his/her) intent is to compel a third person *<insert as appropriate:>*

- to pay or deliver money or property as ransom.
- to engage in particular conduct or to refrain from engaging in particular conduct.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Abducted another person

The first element is that the defendant abducted another person. *<Insert the elements from Kidnapping in the Second Degree, Instruction 6.5-3.>*<sup>1</sup>

### Element 2 - Intent

The second element is that the defendant abducted *<insert name of abducted person>* with the specific intent to compel a third person to (pay money or property as ransom / do or refrain from doing some particular thing). A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

You must find that the defendant abducted *<insert name of abducted person>* with the specific intent to compel some other person to (pay money or property as ransom for the person's release / do or refrain from doing some particular thing). There is no requirement that the defendant communicate in any way with the third person whose (payment / action or inaction) is sought, or specifically make any demand of that person, but merely that the defendant intends, by (his/her) act, to compel the (payment / action or inaction).

### Conclusion

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for kidnapping in the second degree>*, and that (he/she) intended to compel a third person to (pay money or property as ransom / do or refrain from doing something).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of kidnapping in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Second degree kidnapping is simple abduction. See General Statutes § 53a-94.

## 6.5-2 Kidnapping in the First Degree -- § 53a-92 (a) (2)

Revised to June 12, 2009

The defendant is charged [in count \_\_\_] with kidnapping in the first degree. The statute defining this offense reads as follows:

a person is guilty of kidnapping in the first degree when (he/she) abducts another person and restrains the person abducted with intent to *<insert appropriate subsection:>*

- § 53a-92 (a) (2) (A): inflict physical injury upon (him/her) or violate or abuse (him/her) sexually.
- § 53a-92 (a) (2) (B): accomplish or advance the commission of a felony.
- § 53a-92 (a) (2) (C): terrorize (him/her) or a third person.
- § 53a-92 (a) (2) (D): interfere with the performance of a government function.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Abducted another person

The first element is that the defendant abducted another person. "Abduct" means to restrain a person with the intent to prevent (his/her) liberation by *<insert as appropriate:>*

- secreting or holding (him/her) in a place where (he/she) is not likely to be found. There need be no evidence of the use or threatened use of force. The defendant need only have effectively hidden *<insert name of person>* or left (him/her) in a place where (he/she) was not likely to be found.
- using or threatening to use physical force or intimidation. The defendant does not need to actually use force. (He/She) need only threaten to use force in such a manner that *<insert name of other person>* reasonably believed that force would be used if (he/she) tried to escape.

"Restrain" means to restrict a person's movements intentionally and unlawfully in such a manner as to interfere substantially with (his/her) liberty by moving (him/her) from one place to another, or by confining (him/her) either in the place where the restriction commences or in a place to which (he/she) has been moved, without consent. There is no requirement that the movement be of any specific distance or that the confinement last any specific period of time. There need not be any movement at all -- the person could be confined by preventing (him/her) from leaving a place where (he/she) was.

Any apparent consent on the part of *<insert name of other person>* to the movement or confinement must have been actual and not simply acquiescence brought about by force, fear, shock, or deception. *<Insert as appropriate:>*

- *<If consent is at issue:>* The act of consent must have been truly voluntary. Consent may be express or you may find that it is implied from the circumstances that you find

existed. Whether there was consent is a question of fact for you to determine. The defendant has no burden to prove consent. The state must prove the lack of consent.

- *<If person abducted is less than sixteen or an incompetent person:>* Without consent in this case means by any means whatever<sup>1</sup>, including acquiescence of the person, if (he/she) is (a child less than sixteen years old / an incompetent person) and (the parent or guardian / person or institution having lawful control or custody of (him/her)) has not acquiesced in the movement or confinement.

In abducting *<insert name of person>*, the defendant must have specifically intended to prevent (his/her) liberation. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Element 2 - Intent to do further harm**

The second element is that the defendant abducted *<insert name of person>* with the specific intent to *<insert as appropriate:>*

- **§ 53a-92 (a) (2) (A):** inflict physical injury on the person. "Physical injury" is defined as impairment of physical condition or pain. It is a reduced ability to act as one would otherwise have acted. The law does not require that the injury be serious. It may be minor.
- **§ 53a-92 (a) (2) (A):** violate or abuse the person sexually. "To violate or abuse the person sexually" has no technical meaning, and you are to attach to these terms their ordinary common meaning.
- **§ 53a-92 (a) (2) (B):** accomplish or advance the commission of a felony. A felony is an offense for which a person may be sentenced to a term of imprisonment in excess of one year.
- **§ 53a-92 (a) (2) (C):** terrorize the person or a third person. To terrorize means to cause intense fear or apprehension.<sup>2</sup>
- **§ 53a-92 (a) (2) (D):** interfere with the performance of a government function.

It is not necessary that actual (physical injury / sexual violation or abuse / commission of a felony / terror of another person / interference with the performance of a government function) be proved, as long as you determine that the defendant intended to *<insert the allegations>*, and abducted *<insert name of person>* with that intent.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

To clarify the intent aspects of this count. Under the first element, the abduction, the defendant must have intended to prevent the liberation of *<insert name of person>*, and that prevention of liberation must have been accomplished. Under the second element, the defendant must have prevented the liberation of *<insert name of person>* with the intent to commit *<insert allegation of other intended criminal conduct>*. The defendant must have had both intentions at the time of the abduction.

You must consider these two intentions in a further light.<sup>3</sup> It is alleged that the restraint used against *<insert name of person>* was for the purpose of *<insert allegations>*. It is not necessary

to restrain a person to *<insert allegations>*. Nevertheless, some interference with the person's liberty may be necessary or incidental to *<insert allegations>*.

To establish the defendant's intent to prevent the liberation of *<insert name of person>* independent from the intent to *<insert allegations>*, the state must prove that the defendant intended to prevent the complainant's liberation for a longer time or to a greater degree than that which would be necessary to *<insert allegations>*. In this regard, the defendant's intent to prevent the complainant's liberation may be manifested by confinement or movement that is more than merely incidental to the other intended acts. In other words, if the confinement or movement is so much a part of the other conduct that it could not be accomplished without such restraint, then the requisite intent to prevent the complainant's liberation has not been established. There is, however, no minimal period of confinement or degree of movement necessary to establish kidnapping.

Whether the movement or confinement of the complainant is merely incidental to other conduct is a question of fact for you to determine. In determining this, you may consider all the relevant facts and circumstances of the case, including, but not limited to, the following factors:<sup>4</sup>

- the nature and duration of the complainant's movement or confinement by the defendant,
- whether that movement or confinement occurred during the commission of other conduct,
- whether the restraint was inherent in the nature of the other conduct,
- whether the restraint prevented the complainant from summoning assistance,
- whether the restraint reduced the defendant's risk of detection, and
- whether the restraint created a significant danger or increased the complainant's risk of harm independent of that posed by the other conduct.]

As I said before, it doesn't matter whether the defendant committed another criminal act or not. What matters is what (his/her) intent was at the time of the alleged abduction.

[*<Include if the defendant is also charged with the attempt or completion of the offense:>*<sup>5</sup> So determining the defendant's intent for purposes of the second element is completely separate from your deliberations on count \_\_.]

Consider all of the evidence when deciding on what the defendant intended to do. *<Insert Evidence of Intent, Instruction 2.3-2.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant abducted *<insert the name of the other person>*, and that (he/she) intended to *<insert specific allegations of intent>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of kidnapping in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The "any means whatever" language was intended "to protect young children and incompetent persons from being kidnapped when the victim agrees to go with the kidnapper because of promises of favors or gifts. A competent adult's actual consent to the restraint would negate lack of consent if not induced by deception, force, fear or shock; in other words, with no compulsion or deception. . . . The 'any means whatever' language should not be given in an instruction when . . . the victim is a competent adult." *State v. Benjamin*, 86 Conn. App. 344, 355 (2004).

<sup>2</sup> See *State v. Dyson*, 238 Conn. 784, 798-99 (1996) ("[w]hile it seems likely that every kidnapping would induce some degree of fear on the part of the abductee, not every perpetrator possesses the specific intent to terrorize his victim"); *State v. Crudup*, 81 Conn. App. 248, 261, cert. denied, 268 Conn. 913 (2004).

<sup>3</sup> *State v. Salamon*, 287 Conn. 509 (2008), *State v. Sanseverino*, 287 Conn. 608 (2008), and *State v. DeJesus*, 288 Conn. 418 (2008), made a significant change to the law of kidnapping. The trial court should carefully review those cases before using this instruction.

<sup>4</sup> *State v. Salamon*, supra, 287 Conn. 548. These factors are the more commonly occurring factual scenarios that might support a finding of intent to restrain beyond that necessary to commit the underlying crime, but they are only illustrative. Factors should only be included if relevant, and the trial judge may include other factors that appear in the case. The instruction must be tailored to the evidence presented by the state.

<sup>5</sup> Include only if there is another charge arising out of the same conduct that would support an inference of intent for purposes of the second element. Of the possible other criminal conduct intended, only committing a felony is likely to map exactly to another crime charged in the information. While a criminal charge may result from the other conduct, it is irrelevant to the defendant's intent for purposes of this instruction. The same evidence, for example, that supports an inference that the defendant intended to sexually violate or abuse the person may also support a charge of sexual assault, but it may not. In addition, the defendant may not have made enough significant steps towards the other intended crime to support a charge of an attempted crime.

## 6.5-3 Kidnapping in the Second Degree -- § 53a-94

Revised to June 12, 2009

The defendant is charged [in count \_\_\_] with kidnapping in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of kidnapping in the second degree when (he/she) abducts another person.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt that the defendant abducted *<insert name of person>*. "Abduct" means to restrain a person with the intent to prevent (his/her) liberation by *<insert as appropriate:>*

- secreting or holding (him/her) in a place where (he/she) is not likely to be found. There need be no evidence of the use or threatened use of force. The defendant need only have effectively hidden *<insert name of person>* or left (him/her) in a place where (he/she) was not likely to be found.
- using or threatening to use physical force or intimidation. The defendant does not need to actually use force. (He/She) need only threaten to use force in such a manner that *<insert name of other person>* reasonably believed that force would be used if (he/she) tried to escape.

"Restrain" means to restrict a person's movements intentionally and unlawfully in such a manner as to interfere substantially with (his/her) liberty by moving (him/her) from one place to another, or by confining (him/her) either in the place where the restriction commences or in a place to which (he/she) has been moved, without consent. There is no requirement that the movement be of any specific distance or that the confinement last any specific period of time. There need not be any movement at all -- the person could be confined by preventing (him/her) from leaving a place where (he/she) was.

Any apparent consent on the part of *<insert name of other person>* to the movement or confinement must have been actual and not simply acquiescence brought about by force, fear, shock, or deception. *<Insert as appropriate:>*

- *<If consent is at issue:>* The act of consent must have been truly voluntary. Consent may be express or you may find that it is implied from the circumstances that you find existed. Whether there was consent is a question of fact for you to determine. The defendant has no burden to prove consent. The state must prove the lack of consent.
- *<If person abducted is less than sixteen or an incompetent person:>* Without consent in this case means by any means whatever<sup>1</sup>, including acquiescence of the person, if (he/she) is (a child less than sixteen years old / an incompetent person) and (the parent or guardian / person or institution having lawful control or custody of (him/her)) has not acquiesced in the movement or confinement.

In abducting *<insert name of person>*, the defendant must have specifically intended to prevent (his/her) liberation. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

[<Include the following when a related offense is charged or when the evidence supports the commission of an uncharged offense:><sup>2</sup>

<Use one of the following, depending on whether the other offense is charged or not:><sup>3</sup>

- In this case, the defendant is also charged with <identify crime> in count \_\_. <Refer back to the instruction on that count.>
- The state has offered evidence that the defendant committed another offense, although the defendant has not been charged with that offense, specifically <identify crime>. <List the elements of the crime.>

As you can see there is no element of restraint for this offense. Nevertheless some interference with the complainant's liberty may be necessary or incidental to that offense.

To establish the intent required for abduction, the state must prove that the defendant intended to prevent the complainant's liberation for a longer time or to a greater degree than that which is necessary to commit another offense, here <identify other crime>. In this regard, the defendant's intent to prevent the complainant's liberation may be manifested by confinement or movement that is more than merely incidental to the other offense. In other words, if the confinement or movement is so much a part of the other offense that it could not have been committed without such acts, then the requisite intent to prevent the complainant's liberation has not been established. There is, however, no minimal period of confinement or degree of movement necessary to establish kidnapping.

Whether the movement or confinement of the complainant is merely incidental to another offense is a question of fact for you to determine. In determining whether the defendant intended to prevent the complainant's liberation beyond the degree necessary to commit the other offense, you may consider all the relevant facts and circumstances of the case, including, but not limited to, the following factors:<sup>4</sup>

- the nature and duration of the complainant's movement or confinement by the defendant,
- whether that movement or confinement occurred during the commission of the separate offense,
- whether the restraint was inherent in the nature of the separate offense,
- whether the restraint prevented the complainant from summoning assistance,
- whether the restraint reduced the defendant's risk of detection, and
- whether the restraint created a significant danger or increased the complainant's risk of harm independent of that posed by the separate offense.]

Consider all of the evidence when deciding on what the defendant intended to do. <Insert Evidence of Intent, Instruction 2.3-2.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant abducted <insert the name of the other person>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of kidnapping in the second degree, then you shall find the defendant guilty. On

the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The "any means whatever" language was intended "to protect young children and incompetent persons from being kidnapped when the victim agrees to go with the kidnapper because of promises of favors or gifts. A competent adult's actual consent to the restraint would negate lack of consent if not induced by deception, force, fear or shock; in other words, with no compulsion or deception. . . . The 'any means whatever' language should not be given in an instruction when . . . the victim is a competent adult." *State v. Benjamin*, 86 Conn. App. 344, 355 (2004).

<sup>2</sup> *State v. Salamon*, 287 Conn. 509 (2008), *State v. Sanseverino*, 287 Conn. 608 (2008), and *State v. DeJesus*, 288 Conn. 418 (2008), made a significant change to the law of kidnapping. The trial court should carefully review those cases before using this instruction.

<sup>3</sup> A defendant is entitled to an instruction that he or she cannot be convicted of kidnapping if the restraint imposed on the victim was merely incidental to another offense, regardless of whether the state elects to try the defendant for the other offense. See *State v. Salamon*, supra, 287 Conn. 550 n.35; *State v. Sanseverino*, supra, 287 Conn. 621.

<sup>4</sup> *State v. Salamon*, supra, 287 Conn. 548. These factors are the more commonly occurring factual scenarios that might support a finding of intent to restrain beyond that necessary to commit the underlying crime, but they are only illustrative. Factors should only be included if relevant, and the trial judge may include other factors that appear in the case. The instruction must be tailored to the evidence presented by the state.

## 6.5-4 Kidnapping with a Firearm -- § 53a-92a and § 53a-94a

Revised to December 1, 2007

**Note:** The degree of the offense depends on the degree of the underlying crime.

The defendant is charged [in count \_\_\_] with kidnapping in the (first/second) degree with a firearm. The statute defining this offense reads in pertinent part as follows:

a person is guilty of kidnapping in the (first/second) degree with a firearm when (he/she) commits kidnapping in the (first/second) degree and in the commission of said crime (he/she) (uses / is armed with and threatens the use of / displays or represents by (his/her) words or conduct that (he/she) possesses) a pistol, revolver, machine gun, shotgun, rifle or other firearm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Committed kidnapping

The first element is that the defendant committed kidnapping in the (first/second) degree.

<Insert instruction for underlying crime:>

- § 53a-92 (a) (1): Kidnapping in the First Degree (Ransom), Instruction 6.5-1.
- § 53a-92 (a) (2): Kidnapping in the First Degree, Instruction 6.5-2.
- § 53a-94: Kidnapping in the Second Degree, Instruction 6.5-3.

### Element 2 - With a firearm

The second element is that in the commission of the kidnapping the defendant <insert as appropriate:><sup>1</sup>

- used a firearm.
- was armed with and threatened the use of a firearm.
- displayed or represented by (his/her) words or conduct that (he/she) possessed a firearm. [It is not required that what the defendant represents to be a firearm be loaded or that the defendant actually have a firearm. It need only be represented by words or conduct that (he/she) is so armed.]

<Describe specific allegations regarding firearm.> "Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>2</sup> You must find that the firearm was operable at the time of the incident.<sup>3</sup>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant <insert the concluding summary from the instruction for the underlying crime>, and that in the commission of the kidnapping, (he/she) (used / threatened the use of / displayed or represented that (he/she) had) a (pistol / revolver / machine gun / shotgun / rifle / firearm).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of kidnapping in the first degree with a firearm, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Carefully tailor this part of the instruction according to the nature of the conduct alleged and the type of firearm involved. See *State v. Tomlin*, 266 Conn. 608, 626-27 (2003) (allegation of "did shoot" only supported instructing on the first of three distinct methods of committing the offense).

<sup>2</sup> See definitions for machine gun, rifle, shotgun, pistol or revolver in the glossary.

<sup>3</sup> The defendant may raise as an affirmative defense that the firearm was not operable. See Inoperability of Firearm, Instruction 2.9-3.

#### ***Commentary***

"No person shall be convicted of kidnapping in the first degree and kidnapping in the first degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information." General Statutes § 53a-92a (a).

"No person shall be convicted of kidnapping in the second degree and kidnapping in the second degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information." General Statutes § 53a-94a (a).

## 6.5-5 Unlawful Restraint in the First Degree -- § 53a-95

Revised to May 20, 2011

The defendant is charged [in count \_\_\_] with unlawful restraint in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of unlawful restraint in the first degree when (he/she) restrains another person under circumstances which expose such other person to a substantial risk of physical injury.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Intent to restrain<sup>1</sup>**

The first element is that the defendant specifically intended to restrain *<insert name of person>*. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Element 2 - Restrained another person**

The second element is that the defendant restrained *<insert name of person>* by moving (him/her) from one place to another, or by confining (him/her) in some place in such a manner as to interfere substantially with (his/her) liberty. There is no requirement that the movement be of any specific distance or that the confinement last any specific period of time. There need not be any movement at all -- the person could be confined by preventing (him/her) from leaving a place where (he/she) was.

### **Element 3 - Without consent**

The third element is that *<insert name of person>* did not consent to the restraint. *<Insert as appropriate:>*

- *<If person is an adult:>* Consent must have been actual and not simply acquiescence brought about by force, fear, shock, or deception. The act must have been truly voluntary. Consent may be express or you may find that it is implied from the circumstances that you find existed. Whether there was consent is a question of fact for you to determine. The defendant has no burden to prove consent. The state must prove the lack of consent.
- *<If person is less than sixteen or an incompetent person:>* Without consent in this case means by any means whatever<sup>2</sup>, including acquiescence of the person, if (he/she) is (a child less than sixteen years old / an incompetent person) and (the parent or guardian / person or institution having lawful control or custody of (him/her)) has not acquiesced in the movement or confinement.

### **Element 4 - Risk of injury**

The fourth element is that the restraint exposed the person to a substantial risk of physical injury. "Physical injury" is defined as "impairment of physical condition or pain." A "substantial" risk of physical injury means considerable risk of physical injury. Actual injury need not be proved.

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) specifically intended to restrain <insert name of restrained person>, 2) restrained <insert name of restrained person> by <insert specific allegations>, 3) without (his/her) consent, and 4) under circumstances that exposed (him/her) to a substantial risk of physical injury.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of unlawful restraint in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Unlawful restraint is a specific intent crime. *State v. Salamon*, 287 Conn. 509, 570 (2008).

<sup>2</sup> The "any means whatever" language was intended "to protect young children and incompetent persons from being kidnapped when the victim agrees to go with the kidnapper because of promises of favors or gifts. A competent adult's actual consent to the restraint would negate lack of consent if not induced by deception, force, fear or shock; in other words, with no compulsion or deception. . . . The 'any means whatever' language should not be given in an instruction when . . . the victim is a competent adult." *State v. Benjamin*, 86 Conn. App. 344, 355 (2004).

### ***Commentary***

Reckless endangerment in the second degree is a lesser included offense of unlawful restraint in the first degree. *State v. Joseph*, 116 Conn. App. 339, 352-53 (2009).

## 6.5-6 Unlawful Restraint in the Second Degree -- § 53a-96

Revised to May 20, 2011

The defendant is charged [in count \_\_\_] with unlawful restraint in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of unlawful restraint in the second degree when (he/she) restrains another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent to restrain<sup>1</sup>

The first element is that the defendant specifically intended to restrain <insert name of person>. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### Element 2 - Restrained another person

The second element is that the defendant restrained <insert name of person> by moving (him/her) from one place to another, or by confining (him/her) in some place in such a manner as to interfere substantially with (his/her) liberty. There is no requirement that the movement be of any specific distance or that the confinement last any specific period of time. There need not be any movement at all -- the person could be confined by preventing (him/her) from leaving a place where (he/she) was.

### Element 3 - Without consent

The third element is that <insert name of person> did not consent to the restraint. <Insert as appropriate:>

- <If person is an adult:> Consent must have been actual and not simply acquiescence brought about by force, fear, shock, or deception. The act must have been truly voluntary. Consent may be express or you may find that it is implied from the circumstances that you find existed. Whether there was consent is a question of fact for you to determine. The defendant has no burden to prove consent. The state must prove the lack of consent.
- <If person is less than sixteen or an incompetent person:> Without consent in this case means by any means whatever,<sup>2</sup> including acquiescence of the person, if (he/she) is (a child less than sixteen years old / an incompetent person) and (the parent or guardian / person or institution having lawful control or custody of (him/her)) has not acquiesced in the movement or confinement.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) specifically intended to restrain <insert name of restrained person>, 2) restrained <insert name of restrained person> by <insert specific allegations>, and 3) did so without (his/her) consent.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of unlawful restraint in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Unlawful restraint is a specific intent crime. *State v. Salamon*, 287 Conn. 509, 570 (2008).

<sup>2</sup> The "any means whatever" language was intended "to protect young children and incompetent persons from being kidnapped when the victim agrees to go with the kidnapper because of promises of favors or gifts. A competent adult's actual consent to the restraint would negate lack of consent if not induced by deception, force, fear or shock; in other words, with no compulsion or deception. . . . The 'any means whatever' language should not be given in an instruction when . . . the victim is a competent adult." *State v. Benjamin*, 86 Conn. App. 344, 355 (2004).

## **6.6 CUSTODIAL INTERFERENCE**

**6.6-1 Custodial Interference in the First Degree  
-- § 53a-97**

**6.6-2 Custodial Interference in the Second  
Degree -- § 53a-98 (a) (1)**

**6.6-3 Custodial Interference in the Second  
Degree -- § 53a-98 (a) (2)**

**6.6-4 Custodial Interference in the Second  
Degree -- § 53a-98 (a) (3)**

## 6.6-1 Custodial Interference in the First Degree -- § 53a-97

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with custodial interference in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of custodial interference in the first degree when (he/she) commits custodial interference in the second degree *<insert appropriate subsection:>*

- § 53a-97 (a) (1): under circumstances which expose the (child / person) (taken or enticed from lawful custody / held after a request by the lawful custodian) for (his/her) return to a risk that (his/her) (safety will be endangered / health materially impaired).
- § 53a-97 (a) (2): by taking, enticing, or detaining the (child / person) out of this state.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Committed custodial interference

The first element is that the defendant committed custodial interference in the second degree.

*<Insert instruction for underlying crime:>*

- § 53a-98 (a) (1): Custodial Interference in the Second Degree, Instruction 6.6-2.
- § 53a-98 (a) (2): Custodial Interference in the Second Degree, Instruction 6.6-3.
- § 53a-98 (a) (2): Custodial Interference in the Second Degree, Instruction 6.6-4.

### Element 2 - Risk factor

The second element is that the defendant committed this offense *<insert as appropriate:>*

- under circumstances that exposed *<insert name of child or person taken>* to a risk that (his/her) (safety would be endangered / health materially impaired).
- by taking, enticing or detaining *<insert name of child or person taken>* out of this state.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for the underlying crime>*, and that the *<insert name of child or person taken>* was (exposed to a risk of *<insert type of risk>* / taken, enticed, or detained out of this state).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of custodial interference in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### Commentary

A joint legal custodian may be guilty of custodial interference. *State v. Vakilzaden*, 251 Conn. 656, 662-63 (1999) (overruling *Marshak v. Marshak*, 226 Conn. 652 (1993)).

## 6.6-2 Custodial Interference in the Second Degree -- § 53a-98 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with custodial interference in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of custodial interference in the second degree when being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that (he/she) has no legal right to do so, (he/she) takes or entices the child from the child's lawful custodian.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Relative of the child**

The first element is that the defendant is a relative of the child. "Relative" means a parent, ancestor, brother, sister, uncle or aunt.

### **Element 2 - Child under 16**

The second element is that this occurred prior to the child's sixteenth birthday.

### **Element 3 - Intent**

The third element is that the defendant specifically intended to hold the child permanently or for a protracted period. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 4 - Knowledge of no legal right**

The fourth element is that the defendant knew at the time that (he/she) had no legal right to take the child. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See *Knowledge, Instruction 2.3-3.*>

### **Element 5 - Taken from legal custodian**

The fifth element is that the defendant took or enticed the child from (his/her) lawful custodian.<sup>1</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was a relative of the child, 2) the child was under 16 years of age, 3) the defendant intended to hold the child permanently or for a protracted period, 4) (he/she) had no legal right to take the child, and 5) the child was taken from (his/her) lawful custodian.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of custodial interference in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If the legal custody of the child is an issue, the specific factual allegations may need to be explained and/or a definition of lawful custodian provided which may vary with the circumstances.

***Commentary***

A joint legal custodian may be guilty of custodial interference. *State v. Vakilzaden*, 251 Conn. 656, 662-63 (1999) (overruling *Marshak v. Marshak*, 226 Conn. 652 (1993)).

## 6.6-3 Custodial Interference in the Second Degree -- § 53a-98 (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with custodial interference in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of custodial interference in the second degree when knowing that (he/she) has no legal right to do so, (he/she) takes or entices from lawful custody any (incompetent person / person entrusted by authority of law to the custody of another person or institution).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Took person**

The first element is that the defendant took or enticed from lawful custody (an incompetent person / a person entrusted to the custody of another person or institution). ["Incompetent person" means a person who has been adjudged incompetent by a court of competent jurisdiction."<sup>1</sup>] *<Insert specific allegations concerning the status of the person.>*

### **Element 2 - Knowledge of no legal right**

The second element is that the defendant knew at the time, that (he/she) had no legal right to do so. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. *<See Knowledge, Instruction 2.3-3.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant took or enticed (an incompetent person / person entrusted to the custody of another person or institution), and 2) (he/she) knew that (he/she) had no legal right to do so.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of custodial interference in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 17a-680 (12).

### ***Commentary***

A joint legal custodian may be guilty of custodial interference. *State v. Vakilzaden*, 251 Conn. 656, 662-63 (1999) (overruling *Marshak v. Marshak*, 226 Conn. 652 (1993)).

## **6.6-4 Custodial Interference in the Second Degree -- § 53a-98 (a) (3)**

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with custodial interference in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of custodial interference in the second degree when knowing that (he/she) has no legal right to do so, (he/she) holds, keeps or otherwise refuses to return a child who is less than sixteen years old to such child's lawful custodian after a request by such custodian for the return of such child.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Kept child from lawful custodian**

The first element is that the defendant held, kept or refused to return a child to the child's lawful custodian.<sup>1</sup>

### **Element 2 - Child under 16**

The second element is that this occurred prior to the child's sixteenth birthday.

### **Element 3 - Knowledge of no legal right**

The third element is that the defendant knew at the time of the incident that (he/she) had no legal right to keep the child from (his/her) lawful custodian. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See *Knowledge, Instruction 2.3-3.*>

### **Element 4 - Request for return**

The fourth element is that the child's lawful custodian had requested the return of the child.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant held or kept a child or refused to return a child to (his/her) lawful custodian, 2) the child was under 16 years of age at the time, 3) the defendant knew that (he/she) had no legal right to keep the child from (his/her) lawful custodian, and 4) the child's lawful custodian had requested the return of the child.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of custodial interference in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If the legal custody of the child is an issue, the specific factual allegations may need to be explained and/or a definition of lawful custodian provided which may vary with the circumstances.

***Commentary***

A joint legal custodian may be guilty of custodial interference. *State v. Vakilzaden*, 251 Conn. 656, 662-63 (1999) (overruling *Marshak v. Marshak*, 226 Conn. 652 (1993)).

## **6.7 STALKING AND HARASSMENT**

### **6.7 Introduction to Stalking and Harassment**

**6.7-1 Stalking in the First Degree -- § 53a-181c**

**6.7-2 Stalking in the Second Degree -- § 53a-181d  
(b) (1)**

**6.7-3 Stalking in the Third degree -- § 53a-181e**

**6.7-4 Harassment in the First Degree -- §  
53a-182b**

**6.7-5 Harassment in the Second Degree  
(Obscenity) -- § 53a-183 (a) (1)**

**6.7-6 Harassment in the Second Degree (Written  
Communication) -- § 53a-183 (a) (2)**

**6.7-7 Harassment in the Second Degree  
(Telephone) -- § 53a-183 (a) (3)**

## 6.7 Introduction to Stalking and Harassment

Revised to November 6, 2014

### *Stalking*

"The stalking statute was enacted to address the situation where the criminal does not physically take an act against the person or does not verbally make a direct and immediate threat of harm, but merely stalks the victim. . . . The statute can be violated without a defendant's uttering a syllable, writing a word, or making a gesture." (Citations omitted; internal quotation marks omitted.) *State v. Marsala*, 44 Conn. App. 84, 95, cert. denied, 240 Conn. 912 (1997). A defendant's obsessive behaviors are sufficient to reasonably cause a victim to fear for his or her physical safety. *State v. Russell*, 101 Conn. App. 298, 317-18, cert. denied, 284 Conn. 910 (2007).

"As used in § 53a-181d and § 53a-181e, which requires that any 'following' be 'wilful' and 'repeated,' the 'following' must have a predatory thrust to it. The statute does not encompass 'following' that is aimless, unintentional, accidental or undertaken for a lawful purpose." *State v. Jackson*, 56 Conn. App. 264, 272, cert. denied, 242 Conn. 938 (2000).

"The standard to be applied in determining the reasonableness of the victim's fear in the context of the crime of stalking is a subjective-objective one." *State v. Cummings*, 46 Conn. App. 661, 678, cert. denied, 243 Conn. 940 (1997).

### *Harrassment*

The harrassment statute "does not require the state to prove that the defendant engaged in a direct communication with the person whom he intended to harass." *State v. Snyder*, 40 Conn. App. 544, 552, cert. denied, 237 Conn. 921 (1996) (defendant caused numerous pieces of unsolicited mail and packages to be received by the complainants).

In *State v. Moulton*, 310 Conn. 337, 351-63 (2014), the Supreme Court overruled prior precedent and concluded that § 53a-183 (a) proscribes harassing and alarming speech as well as conduct. Because this raises first amendment concerns, the scope of the prohibition is limited to speech, like true threats, that is not protected. The court must, therefore, "instruct the jury on the difference between protected and unprotected speech whenever the state relies on the content of a communication as substantive evidence of a violation of § 53a-183 (a)." *Id.*, 362.

Conviction of both criminal violation of a protective order and harrassment in the second degree does not violate the prohibition against double jeopardy. *State v. Martino*, 61 Conn. App. 118, 128 (2000).

## 6.7-1 Stalking in the First Degree -- § 53a-181c

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with stalking in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of stalking in the first degree when (he/she) commits stalking in the second degree and *<insert appropriate subsection:>*

- § 53a-181c (a) (1): (he/she) has previously been convicted of stalking in the second degree.
- § 53a-181c (a) (2): such conduct violates a court order in effect at the time of the offense.
- § 53a-181c (a) (3): the other person is under sixteen years of age.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Elements 1 - Committed stalking in the second degree

The first element is that the defendant committed stalking in the second degree. *<Insert the elements from Stalking in the Second Degree, Instruction 6.7-2.>*

### Element 2 - Additional factor

The second element is that *<insert as appropriate:>*

- the defendant has previously been convicted of stalking in the second degree.
- such conduct violated a court order in effect at the time of the offense. It is not enough that the defendant simply violated a court order, but instead the same conduct that violated a court order must also be proved to constitute stalking in the second degree.
- *<insert name of complainant>* is under sixteen years of age.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for stalking in the second degree>*, and that *<insert the additional factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of stalking in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.7-2 Stalking in the Second Degree -- § 53a-181d (b) (1)

Revised to November 6, 2014

**Note: This instruction is for crimes committed on or after October 1, 2012. Public Act No. 12-114, § 12, substantially revised the definition of the offense. For crimes committed before October 1, 2012, see Instruction 6.7-2A in the Archive.**

The defendant is charged [in count \_\_\_] with stalking in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of stalking in the second degree when such person knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's physical safety or the physical safety of a third person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Knowingly**

The first element is that the defendant acted "knowingly." A person acts "knowingly" with respect to a circumstance described in a statute when (he/she) is aware that such circumstance exists. <See Knowledge, Instruction 2.3-3.>

### **Element 2 - Course of conduct**

The second element is that the defendant engaged in a course of conduct directed at a specific person, <insert name of person>. "Course of conduct" means two or more acts, including, but not limited to, acts in which a person directly, indirectly or through a third party, by any action, method, device or means, <insert as appropriate based on the allegations:>

- (follows / lies in wait for / monitors / observes / surveils / threatens / harasses / communicates with / sends unwanted gifts to a person)
- interferes with a person's property.

The defendant may do any one of these more than once or in combination. For example, follow two or more times or follow once and send an unwanted gift once.

<Insert definitions as appropriate:>

- To "follow" means to go, proceed or come after, to move behind in the same direction. Following implies proximity in space and time. Whether someone has deliberately maintained sufficient visual or physical proximity with another person, uninterrupted, over a substantial enough period of time to constitute following will depend on the facts and circumstances of each case.<sup>1</sup>
- To "lie in wait for" means to wait in a place where another person is likely to be or to pass by.<sup>2</sup>
- To "monitor" means to watch closely for purposes of control, surveillance, to keep track of or to check continually.

- To "surveil" means to place under surveillance, the act of carefully watching someone.
- To "observe" means to see, watch, perceive or notice.

These actions must be of a predatory nature. The statute does not encompass conduct that is aimless, unintentional, accidental or undertaken for a lawful purpose.

- To "threaten" means to utter a threat that a reasonable person would understand as a serious expression of intent to harm or damage and is not mere puffery, bluster, jest or hyperbole. In determining whether the threat is a true threat, consider the factual context in which the alleged threat occurred including the reaction of the person to whom the threat was directed and the defendant's conduct before and after the alleged threat.
- To "harass" means to disturb persistently, bother continuously, pester or torment.
- To "communicate" means to express thoughts, feelings or information by writing or speaking.

### **Element 3 - Caused fear**

The third element is that the defendant caused <insert name of person> to reasonably fear for (his/her) physical safety or the physical safety of a third person. Determining whether this element is satisfied requires a two step process. First, the situation and the facts must be viewed from the viewpoint of <insert name of person>. Did (he/she) in fact fear for (his/her) physical safety? If the answer to that question is no, you must find the defendant not guilty. If the answer to that question is yes, you must then ask whether that fear was reasonable. You must answer that question from the viewpoint of a reasonable person under the circumstances at the time. You must ask yourself whether under all the circumstances then present, was the fear reasonable?

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that (1) the defendant acted knowingly, (2) the defendant engaged in a course of conduct directed at a specific person, <insert name of person>, and (3) the defendant's conduct caused <insert name of person> to fear for ((his/her) physical safety / the physical safety of a third person, <insert name of third person>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of stalking in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Marsala*, 44 Conn. App. 84, 98, cert. denied, 240 Conn. 912 (1997); see also *State v. Jackson*, 56 Conn. App. 264, 272, cert. denied, 242 Conn. 938 (2000).

<sup>2</sup> For a discussion of the traditional legal definition of "lying in wait," see *State v. Culmo*, 43 Conn. Sup. 46, 63-64 (1993). The committee thought that this definition, with its emphasis on concealment and surprise, was not applicable to the behavior that the stalking statute addresses.

*Commentary*

This crime was significantly modified by Public Acts 2012, No. 114, effective October 1, 2012. In addition, a new subsection was added creating an alternative method of committing stalking in the second degree. An instruction for that offense will be added in the future.

## 6.7-3 Stalking in the Third Degree -- § 53a-181e

Revised to June 12, 2009

The defendant is charged [in count \_\_\_] with stalking in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of stalking in the third degree when (he/she) recklessly causes another person to reasonably fear for (his/her) physical safety by wilfully and repeatedly following or lying in wait for such other person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Recklessly caused fear**

The first element is that the defendant recklessly caused <insert name of person> to reasonably fear for (his/her) physical safety. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

"Fear for (his/her) physical safety" means that (he/she) feared that bodily harm could come to (him/her). Determining whether this element is satisfied requires a two step process. First, the situation and the facts must be viewed from the viewpoint of <insert name of person>. Did (he/she) in fact fear for (his/her) physical safety? If the answer to that question is no, you must find the defendant not guilty. If the answer to that question is yes, you must then ask whether that fear was reasonable. You must answer that question from the viewpoint of a reasonable person under the circumstances at the time. You must ask yourself whether under all the circumstances then present, was the fear reasonable?<sup>1</sup>

### **Element 2 - Followed or lay in wait**

The second element is that the defendant (followed / lay in wait for) <insert name of person>. <Insert as appropriate:>

- The following must have a predatory feel to it. The statute does not encompass following that is aimless, unintentional, accidental or undertaken for a lawful purpose. Following implies proximity in space as well as time. Whether someone has deliberately maintained sufficient visual or physical proximity with another person, uninterrupted, over a substantial enough period of time to constitute "following" will depend upon a variety of differing factors in each case.<sup>2</sup>
- In the context of stalking, "lying in wait" means waiting in a place where another person is likely to be or to pass by.<sup>3</sup>

### **Element 3 - Wilfulness**

The third element is that the defendant acted wilfully. To act "wilfully" means to act intentionally or deliberately.

#### **Element 4 - Repeatedly**

The fourth element is that the defendant acted repeatedly. Acting "repeatedly" means acting on more than one occasion. An isolated act of following or lying in wait cannot constitute stalking.<sup>4</sup>

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant recklessly caused <insert name of person> to fear for (his/her) safety, 2) the defendant followed or lay in wait for <insert name of person>, 3) the defendant acted wilfully, and 4) the defendant acted repeatedly.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of stalking in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Cummings*, 46 Conn. App. 661, 678 n.12, cert. denied, 243 Conn. 940 (1997).

<sup>2</sup> *State v. Marsala*, 44 Conn. App. 84, 98, cert. denied, 240 Conn. 912 (1997); see also *State v. Jackson*, 56 Conn. App. 264, 272, cert. denied, 242 Conn. 938 (2000).

<sup>2</sup> For a discussion of the traditional legal definition of "lying in wait," see *State v. Culmo*, 43 Conn. Sup. 46, 63-64 (1993). The committee thought that this definition, with its emphasis on concealment and surprise, was not applicable to the behaviors that the stalking statute addresses.

<sup>4</sup> *State v. Jackson*, 56 Conn. App. 264, 273, cert. denied, 242 Conn. 938 (2000); *State v. Cummings*, supra, 46 Conn. App. 679 n.13; see also *State v. Russell*, 101 Conn. App. 298, 317-18, cert. denied, 284 Conn. 910 (2007) (there is no time limitation on the time that may have elapsed between the acts).

## 6.7-4 Harassment in the First Degree -- § 53a-182b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with harassment in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of harassment in the first degree when, with the intent to harass, annoy, alarm, or terrorize another person, (he/she) threatens to kill or physically injure that person or any other person, and communicates such threat by telephone, or by telegraph, mail, computer network or any other form of written communication, in a manner likely to cause annoyance or alarm and has been convicted of *<insert specified felony>*.<sup>1</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant had the specific intent to harass, annoy, alarm, or terrorize<sup>2</sup> another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

"Harass" means to trouble, worry or torment. "Annoy" means to irritate, vex, bother as by repeated action. "Alarm" means to make suddenly afraid, anxious, or frightened. "Terrorize" means to cause intense fear or apprehension.<sup>3</sup>

### Element 2 - Threat

The second element is that the defendant threatened to kill or physically injure that person or any other person.

### Element 3 - Communicated threat

The third element is that the defendant communicated such threat by telephone, or by telegraph, mail, email or any other form of written communication, in a manner likely to cause annoyance or alarm. *<Describe specific allegations.>*

### Element 4 - Prior conviction

The fourth element is that the defendant had previously been convicted of a felony. "Felony" is an offense for which a person may be sentenced to a term of imprisonment in excess of one year. "Convicted" means having a judgment of conviction entered by a court of competent jurisdiction.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant intended to harass, annoy, alarm or terrorize *<insert name of person>*, 2) the defendant threatened to kill or physically injure *<insert name of person>*, 3) the threat was communicated by means of *<insert means of making threat>*, and 4) the defendant had previously been convicted of a felony.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of harassment in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> To be convicted of a violation of § 53a-182b, the defendant must have previously been convicted of a capital felony, a class A felony, a class B felony, except a conviction under section 53a-86 or 53a-122, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216.

<sup>2</sup> *State v. Marsala*, 43 Conn. App. 527, 540 (1996), cert. denied, 239 Conn. 957 (1997) (these words are not conceptually distinct).

<sup>3</sup> *State v. Dyson*, 238 Conn. 784, 798-99 (1996); *State v. Crudup*, 81 Conn. App. 248, 261, cert. denied, 268 Conn. 913 (2004).

## 6.7-5 Harassment in the Second Degree (Obscenity)

### -- § 53a-183 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with harassment in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of harassment in the second degree when by telephone, (he/she) addresses another in or uses indecent or obscene language.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

#### **Element 1 - Telephone call**

The first element is that the defendant made a telephone call to *<insert name of person>*.

#### **Element 2 - Obscene or indecent language**

The second element is that the defendant addressed *<insert name of person>* in or used indecent or obscene language.

The word "indecent" is defined as "morally offensive, unseemly." The test is whether the defendant's words, under contemporary community standards, were so grossly indecent to the person addressed as to amount to a serious annoyance.

The word "obscene" is defined as "offensive to modesty or decency; lewd." To be found obscene, the defendant's words must, under contemporary community standards, be so grossly obscene to the person to whom the language is addressed as to amount to a serious annoyance. The defendant's words must be, in a significant way, erotic and must appeal to prurient interest in sex or portray sex in a patently offensive way.

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant made a telephone call to *<insert name of person>*, and 2) addressed *<insert name of person>* in or used indecent or obscene language.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of harassment in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.7-6 Harassment in the Second Degree (Written Communication) -- § 53a-183 (a) (2)

Revised to November 6, 2014

The defendant is charged [in count \_\_\_] with harassment in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of harassment in the second degree when with intent to harass, annoy or alarm another person, (he/she) communicates with a person by (telegraph / mail / electronically transmitting a facsimile through connection with a telephone network / computer network / any other form of written communication) in a manner likely to cause annoyance or alarm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant intended to harass, annoy or alarm another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

"Harass" means to trouble, worry or torment. "Annoy" means to irritate, vex, bother, as by repeated action. "Alarm" means to make suddenly afraid, anxious, or frightened.

### Element 2 - Written communication

<If the allegations rely on the content of the communication:><sup>1</sup>

The second element is that the defendant sent a written communication in which (he/she) made a threat to commit an act of violence. A threat can only be punishable when it is a true threat, that is, a threat that a reasonable person would understand as a serious expression of an intent to harm or assault, and not as mere puffery, bluster, jest or hyperbole. In determining whether the threat is a true threat, consider the particular factual context in which the allegedly threatening conduct occurred which could include the reaction of the person allegedly being threatened and the defendant's conduct before and after the allegedly threatening conduct. <Describe specific allegations.>

<If the allegations rely only on the sending of the communication:>

The second element is that the defendant sent a written communication to <insert name of person> in a manner likely to cause annoyance or alarm. Written communications include telegrams, letters, faxes, and email. <Describe specific allegations.>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant intended to harass, annoy or alarm <insert name of person>, and 2) by means of <insert type of written communication> (he/she) communicated with <insert name of person> in a manner that was likely to cause annoyance or alarm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of harassment in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The provisions of harassment by telephone and by writing are identical "in all material respects" so "the scope of the two statutory subdivisions with respect to speech also is identical." *State v. Moulton*, 310 Conn. 337, 355-56 (2014). *Moulton* held that if the allegations rely on the content of the communication, the content must qualify as a true threat.

## 6.7-7 Harassment in the Second Degree (Telephone) -- § 53a-183 (a) (3)

Revised to November 6, 2014

The defendant is charged [in count \_\_\_] with harassment in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of harassment in the second degree when with intent to harass, annoy or alarm another person, (he/she) makes a telephone call, whether or not conversation ensues, in a manner likely to cause annoyance or alarm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant intended to harass, annoy or alarm another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

"Harass" means "to trouble, worry or torment." "Annoy" means to "irritate, vex, bother, as by repeated action." "Alarm" means "to make suddenly afraid, anxious, frightened."

### Element 2 - Telephone call

<If the allegations rely on the content of the call:><sup>1</sup>

The second element is that the defendant made a telephone call during which (he/she) made a threat to commit an act of violence. A threat can only be punishable when it is a true threat, that is, a threat that a reasonable person would understand as a serious expression of an intent to harm or assault, and not as mere puffery, bluster, jest or hyperbole. In determining whether the threat is a true threat, consider the particular factual context in which the allegedly threatening conduct occurred which could include the reaction of the person allegedly being threatened and the defendant's conduct before and after the allegedly threatening conduct.

<If the allegations rely only on the making of the call:>

The second element is that the defendant made a telephone call in a manner that was likely to cause annoyance or alarm. It does not matter whether the defendant had a conversation with <insert name of person>. It only matters that (he/she) made the telephone call in a manner that was likely to cause annoyance or alarm. <Describe specific allegations.>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant intended to harass, annoy or alarm <insert name of person>, and 2) made a telephone call to <insert name of person> (during which (he/she) made a threat to commit an act of violence / in a manner that was likely to cause annoyance or alarm).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of harassment in the second degree, then you shall find the defendant guilty. On

the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If the allegations rely on the content of the call, the content must qualify as a true threat. *State v. Moulton*, 310 Conn. 337, 360 (2014).

## **6.8 VIOLATION OF PROTECTIVE AND RESTRAINING ORDERS**

**6.8-1 Criminal Violation of a Protective Order --  
§ 53a-223**

**6.8-2 Criminal Violation of a Standing Criminal  
Restraining Order -- § 53a-223a**

**6.8-3 Criminal Violation of a Restraining Order  
-- § 53a-223b**

## 6.8-1 Criminal Violation of a Protective Order -- § 53a-223

Revised to December 1, 2007 (modified November 6, 2014)

The defendant is charged [in count \_\_\_\_] with criminal violation of a protective order. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal violation of a protective order when an order<sup>1</sup> has been issued against such person, and such person violates such order.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Protective order

The first element is that a court issued a protective order against the defendant. <Review evidence of order.>

### Element 2 - Violation

The second element is that the defendant violated a condition of the protective order. To violate a condition means to act in disregard of or to go against the condition. <Insert specific condition that the defendant is charged with violating.> A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. <See Intent: General, Instruction 2.3-1.>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) a court issued a protective order against the defendant, and 2) (he/she) violated a condition of that protective order.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal violation of a protective order, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Issued pursuant to General Statutes §§ 46b-38c (e), 53a-28 (f), 54-1k, or 54-82r.

### Commentary

Violation of a protective order is a general intent crime. "[T]he intent required to prove a violation of § 53a-223 (a) is only that the defendant intended to perform the activities that constituted the violation of the protective order." *State v. Fagan*, 280 Conn. 69, 77 (2006), cert. denied, \_\_ U.S. \_\_, 127 S.Ct. 1491, 167 L.Ed.2d 236 (2007); see also *State v. Charles*, 78 Conn. App. 125, 130-31, cert. denied, 266 Conn. 908 (2003); *State v. Hersey*, 78 Conn. App. 141, 162, cert. denied, 266 Conn. 903 (2003).

The validity of the underlying order is not a necessary element of the offense. *State v. Wright*, 273 Conn. 418, 432 (2005); *State v. Manns*, 91 Conn. App. 827, 834, cert. denied, 276 Conn. 927 (2005).

### ***Double jeopardy***

Although violation of a protective order and criminal trespass constitute the same offense under the *Blockburger* test, "the legislature intended multiple punishments for the offense of trespassing in violation of a protective order." *State v. Quint*, 97 Conn. App. 72, 80, cert. denied, 280 Conn. 924 (2006).

Conviction of both criminal violation of a protective order and harassment in the second degree does not violate the prohibition against double jeopardy. *State v. Martino*, 61 Conn. App. 118, 128 (2000).

It was not double jeopardy to punish the defendant for both violation of a protective order, stemming from his possession of firearms in violation of that order, and criminal possession of a firearm while subject to a protective order. *State v. Bernacki*, 307 Conn. 1 (2012). In *Bernacki*, the Supreme Court held that in deciding a double jeopardy claim involving the violation of a court order, the "same offense" prong of the *Blockburger* test looks only at the statutes and the charging documents and not the specific terms of the court order that was violated.

### ***Sentence Enhancer***

Effective January 1, 2015, the statute provides for an enhanced sentence if the violation of this offense involves either imposing any restraint upon the person or liberty of a person in violation of the protective order or threatening, harassing, assaulting, molesting, sexually assaulting or attacking a person in violation of the protective order. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4 and the definition of serious physical injury.

## 6.8-2 Criminal Violation of a Standing Criminal Protective Order -- § 53a-223a

Revised to May 20, 2011 (modified November 6, 2014)

The defendant is charged [in count \_\_\_] with criminal violation of a standing criminal protective order. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal violation of a standing criminal protective order when an order<sup>1</sup> has been issued against such person, and such person violates such order.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Standing criminal protective order**

The first element is that a court issued a standing criminal protective order against the defendant. *<Review evidence of order.>*

### **Element 2 - Violation**

The second element is that the defendant violated a condition of the order. To violate a condition means to act in disregard of or to go against the condition. *<Insert specific condition that the defendant is charged with violating.>* A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. *<See Intent: General, Instruction 2.3-1.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) a court issued a standing criminal protective order against the defendant, and 2) the defendant violated a condition of that order.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal violation of a standing criminal protective order, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Issued pursuant to General Statutes § 53a-40e.

### ***Commentary***

The validity of the underlying order is not an element of the offense. *State v. Wright*, 273 Conn. 418, 432 (2005); *State v. Manns*, 91 Conn. App. 827, 834, cert. denied, 276 Conn. 927 (2005).

### ***Sentence Enhancer***

Effective January 1, 2015, the statute provides for an enhanced sentence if the violation of this offense involves either imposing any restraint upon the person or liberty of a person in

violation of the standing criminal protective order or threatening, harassing, assaulting, molesting, sexually assaulting or attacking a person in violation of the standing criminal protective order. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4 and the definition of serious physical injury.

## 6.8-3 Criminal Violation of a Restraining Order -- § 53a-223b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal violation of a restraining order. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal violation of a restraining order when *<insert as appropriate:>*

- § 53a-223b (a) (1) (A): a restraining order has been issued against such person,
- § 53a-223b (a) (1) (B): a foreign order of protection . . . has been issued against such person in a case involving the use, attempted use or threatened use of physical force against another,

and such person, having knowledge of the terms of the order *<insert as appropriate:>*

- § 53a-223b (a) (2) (A): does not stay away from a person or place in violation of the order.
- § 53a-223b (a) (2) (B): contacts a person in violation of the order.
- § 53a-223b (a) (2) (C): imposes any restraint upon the person or liberty of a person in violation of the order.
- § 53a-223b (a) (2) (D): threatens, harasses, assaults, molests, sexually assaults or attacks a person in violation of the order.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Restraining order

The first element is that a restraining order had been issued<sup>1</sup> against the defendant. *<Review evidence of order and defendant's notice of it.>*

[If the restraining order was issued by a state other than Connecticut, it must have been ordered in a case involving the use, attempted use or threatened use of physical force against another.]<sup>2</sup>

### Element 2 - Knowledge of terms of order

The second element is that the defendant had knowledge of the terms of the order. This means that the defendant must know of the conditions of the order. A person acts "knowingly" with respect to a circumstance when (he/she) is aware that such circumstance exists. *<See Knowledge, Instruction 2.3-3.>*

### Element 3 - Violation

The third element is that the defendant violated a condition of that restraining order in that (he/she) *<insert as appropriate:>*

- § 53a-223b (a) (2) (A): did not stay away from a person or place in violation of the order.
- § 53a-223b (a) (2) (B): contacted a person in violation of the order.

- **§ 53a-223b (a) (2) (C):** imposed a restraint upon the person or liberty of a person in violation of the order. To restrain a person means to restrict a person's movement intentionally and unlawfully without the other person's consent.
- **§ 53a-223b (a) (2) (D):** threatened, harassed, assaulted, molested, sexually assaulted or attacked a person in violation of the order.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) a restraining had been issued against the defendant, 2) the defendant had knowledge of the terms of the order, and 3) the defendant violated a condition of that order by *<insert specific allegations>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal violation of a restraining order, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Pursuant to General Statutes § 46b-15.

<sup>2</sup> As defined in General Statutes § 46b-15a.

### ***Commentary***

The court should include in its instruction the specific condition(s) the state is charging the defendant with violating. This should include the definition of the violation. The court is cautioned to specifically tailor its instruction to the alleged condition violated. The statutory definitions of certain offenses may provide a useful basis for this language.

The four ways of violating the restraining order "denote separate and distinct conduct." *State v. Culver*, 97 Conn. App. 332, 340, cert. denied, 280 Conn. 935 (2006) (defendant convicted of two counts of violation of a restraining order for the same course of conduct).

The validity of the underlying order is not a necessary element of the offense. *State v. Wright*, 273 Conn. 418, 432 (2005); *State v. Manns*, 91 Conn. App. 827, 834, cert. denied, 276 Conn. 927 (2005).

## **6.9 ABUSE**

### **6.9-1 Abuse of an Elderly, Blind, Disabled or Intellectually Disabled Person -- § 53a-321, § 53a-322, and § 53a-323**

## 6.9-1 Abuse of an Elderly, Blind, Disabled or Intellectually Disabled Person -- § 53a-321, § 53a-322, and § 53a-323

Revised to May 10, 2012

**Note:** The degree of the offense depends on the defendant's intent and the resulting injury. See the table in the commentary.

The defendant is charged [in count \_\_\_] with abuse in the (first / second / third) degree. The statute defining this offense reads in pertinent part as follows:

a person<sup>1</sup> is guilty of abuse in the (first / second / third) degree when such person (intentionally / knowingly / recklessly) commits abuse of (a/an) (elderly / blind / disabled / intellectually disabled<sup>2</sup>) person and causes (serious physical injury / physical injury) to such (elderly / blind / disabled / intellectually disabled) person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant acted: *<insert applicable intent depending upon the degree of the offense charged:>*

- **First degree:** intentionally. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*
- **Second degree:** knowingly. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. *<See Knowledge, Instruction 2.3-3.>*
- **Third degree:** recklessly. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. *<See Recklessness, Instruction 2.3-4.>*

### Element 2 - Abuse

The second element is that the defendant committed abuse of (a/an) (elderly / blind / disabled / intellectually disabled) person. "Abuse" means any repeated act or omission that causes physical injury or serious physical injury to (a/an) (elderly / blind / disabled / intellectually disabled) person, except when (A) the act or omission is a part of the treatment or care, and in furtherance of the health and safety of the (elderly / blind / disabled / intellectually disabled) person, or (B) the act or omission is based upon the instructions, wishes, consent, refusal to consent, or revocation of consent of a[n] (elderly / blind / disabled / intellectually disabled) person, or the legal representative of an incapable (elderly / blind / disabled / intellectually disabled) person. "Repeated" means an act or omission that occurs on two or more occasions.

<Insert appropriate definition:>

- An "elderly person" means any person who is sixty years of age or older.
- A "blind person" means any individual whose central vision acuity does not exceed 20/200 in the better eye with correcting lenses, or if (his/her) visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends to an angle no greater than twenty degrees.
- A "disabled person" means any individual who has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.
- A "intellectually disabled person" means any individual who has a significantly subaverage general intellectual functioning existing at the same time as deficits in adaptive behavior and manifested during the developmental period.

### **Element 3 - Resulting injury**

The third element is that by that abuse, the defendant caused (serious physical injury / physical injury)<sup>3</sup> to <insert name of person injured>. <Insert appropriate definition:>

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

This means that the defendant's conduct was the proximate cause of the person's injuries. You must find it proved beyond a reasonable doubt that <insert name of person injured> was injured as a result of the actions of the defendant. <See Proximate Cause, Instruction 2.6-1.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant acted (intentionally / knowingly / recklessly), 2) the defendant committed abuse of <insert name of person>, who was at the time (a/an) (elderly / blind / physically disabled / intellectually disabled) person, and 3) as the result of that abuse, the defendant caused (serious physical injury / physical injury) to <insert name of person>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of abuse of a[n] (elderly / blind / disabled / intellectually disabled) person in the (first / second / third) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The statutory definition of "person" in General Statutes § 53a-320 refers to the defendant and means any natural person, corporation, partnership, limited liability company, unincorporated business or other business entity.

<sup>2</sup> Public Acts 2011, No. 11-129, § 1, replaced the term "mental retardation" with "intellectual disability," effective October 1, 2011.

<sup>3</sup> See table below.

*Commentary*

The following table shows the intent and result elements of the three degrees of this offense:

<b>Statute / Degree</b>	<b>Intent</b>	<b>Result</b>
§ 53a-321 - First degree	Specific intent	Serious physical injury
§ 53a-322 (a) (1) - Second degree	Specific intent	Physical injury
§ 53a-322 (a) (2) - Second degree	Knowingly	Serious physical injury
§ 53a-323 (a) (1) - Third degree	Knowingly	Physical injury
§ 53a-323 (a) (2) - Third degree	Recklessly	Physical injury

## **6.10 INTIMIDATION**

**6.10-1 Intimidation Based on Bigotry or Bias in the First Degree -- § 53a-181j**

**6.10-2 Intimidation Based on Bigotry or Bias in the Second Degree -- § 53a-181k**

**6.10-3 Intimidation Based on Bigotry or Bias in the Third Degree -- § 53a-181l**

## 6.10-1 Intimidation Based on Bigotry or Bias in the First Degree -- § 53a-181j

Revised to May 10, 2012

The defendant is charged [in count \_\_\_] with intimidation based on bigotry or bias in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of intimidation based on bigotry or bias in the first degree when such person maliciously, and with specific intent to intimidate or harass another person because of the actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression) of such other person, causes serious physical injury to such other person or to a third person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant acted maliciously and with the specific intent to intimidate or harass another person because of that person's actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression). The state must prove not only that the defendant had the specific intent to intimidate or harass <insert name of complainant> but that (he/she) did so because of <insert name of complainant>'s actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression).

To act "with malice" means to act with some improper or unjustifiable or harmful motive including, but not limited to, the desire to cause pain, injury or distress to another.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

The state need not prove that <insert name of complainant> was actually of a certain (race / religion / ethnicity / disability / sexual orientation / gender identity or expression). It is sufficient for the state to prove beyond a reasonable doubt that the defendant perceived <insert name of complainant> to be of a certain (race / religion / ethnicity / disability / sexual orientation / gender identity or expression).

[<Insert appropriate definition(s):>

- "Disability" means (physical disability / mental disability / intellectual disability<sup>1</sup>).
- "Physical disability" means any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, blindness, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.
- "Mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.

- "Intellectual disability" means a significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose and standardized on a significantly adequate population and administered by a person or persons formally trained in test administration; "significantly subaverage" means an intelligence quotient more than two standard deviations below the mean for the test; "adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group; and "developmental period" means the period of time between birth and the eighteenth birthday.
- "Sexual orientation" means having a preference for heterosexuality, homosexuality or bisexuality, having a history of such preference or being identified with such preference.<sup>2</sup>
- "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's assigned sex at birth.

### **Element 2 - Serious physical injury**

The second element is that the defendant caused serious physical injury to *<insert name of complainant>*. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) acted maliciously and with specific intent to intimidate or harass *<insert name of complainant>* because of (his/her) actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression), and 2) (he/she) caused serious physical injury to *<insert name of complainant>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of intimidation based on bigotry or bias in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Public Acts 2011, No. 11-129, § 20, replaced the term "mental retardation" with "intellectual disability," effective October 1, 2011.

<sup>2</sup> General Statutes § 46a-81a.

## 6.10-2 Intimidation Based on Bigotry or Bias in the Second Degree -- § 53a-181k

Revised to May 10, 2012

The defendant is charged [in count \_\_\_] with intimidation based on bigotry or bias in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of intimidation based on bigotry or bias in the second degree when such person maliciously, and with specific intent to intimidate or harass another person because of the actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression) of such other person <insert appropriate subsection:>

- § 53a-181k (a) (1): causes physical contact with such other person.
- § 53a-181k (a) (2): damages, destroys or defaces any real or personal property of such other person.
- § 53a-181k (a) (3): threatens, by word or act, to (cause physical contact / damage, destroy or deface any real or personal property), if there is reasonable cause to believe that the (physical contact / property damage) will occur.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant acted maliciously and with the specific intent to intimidate or harass another person because of that person's actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression). The state must prove not only that the defendant had the specific intent to intimidate or harass <insert name of complainant> but that (he/she) did so because of <insert name of complainant>'s actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression).

To act "with malice" means to act with some improper or unjustifiable or harmful motive including, but not limited to, the desire to cause pain, injury or distress to another.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

The state need not prove that <insert name of complainant> was actually of a certain (race / religion / ethnicity / disability / sexual orientation / gender identity or expression). It is sufficient for the state to prove beyond a reasonable doubt that the defendant perceived <insert name of complainant> to be of a certain (race / religion / ethnicity / disability / sexual orientation / gender identity or expression).

[<Insert appropriate definition(s):>

- "Disability" means (physical disability / mental disability / intellectual disability<sup>1</sup>).
- "Physical disability" means any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or

- from illness, including, but not limited to, blindness, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.
- "Mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.
  - "Intellectual disability" means a significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose and standardized on a significantly adequate population and administered by a person or persons formally trained in test administration; "significantly subaverage" means an intelligence quotient more than two standard deviations below the mean for the test; "adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group; and "developmental period" means the period of time between birth and the eighteenth birthday.
  - "Sexual orientation" means having a preference for heterosexuality, homosexuality or bisexuality, having a history of such preference or being identified with such preference.<sup>2</sup>
  - "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's assigned sex at birth.

## **Element 2 - Physical Contact / Property Damage**

The second element is that the defendant *<insert as appropriate:>*

- caused physical contact with *<insert name of complainant>*.
- damaged, destroyed or defaced any real or personal property of *<insert name of complainant>*. "Real property" means real estate or land.
- threatened, by word or act, to (cause physical contact with *<insert name of complainant>* / to damage, destroy or deface any real or personal property of *<insert name of complainant>*), if there is reasonable cause to believe that such act will occur. Note that it does not have to be a verbal threat but it can be an act. Also, the (physical contact / property damage) does not have to have occurred. It is only necessary that there was reasonable cause to believe that it would occur. "Reasonable cause" means whether an ordinary person in the same circumstances would believe that it would occur.

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) acted maliciously and with specific intent to intimidate or harass *<insert name of complainant>* because of (his/her) actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression) and 2) *<insert specific allegations re physical contact or property damage>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of intimidation based on bigotry or bias in the second degree, then you shall find the

defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Public Acts 2011, No. 11-129, § 20, replaced the term "mental retardation" with "intellectual disability," effective October 1, 2011.

<sup>2</sup> General Statutes § 46a-81a.

***Commentary***

The threats proscribed by § 53a-181k (a) (3) are limited to "true threats." *State v. Skidd*, 104 Conn. App. 46, 54 (2007). See the discussion of true threats in the Introduction to Breach of Peace and Disorderly Conduct.

## 6.10-3 Intimidation Based on Bigotry or Bias in the Third Degree -- § 53a-181l

Revised to May 10, 2012

The defendant is charged [in count \_\_\_] with intimidation based on bigotry or bias in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of intimidation based on bigotry or bias in the third degree when such person, with specific intent to intimidate or harass (another person / group of persons) because of the actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression) of such other person or persons

<insert appropriate subsection:>

- § 53a-181l (a) (1): damages, destroys or defaces any real or personal property.
- § 53a-181l (a) (2): threatens, by word or act, to damage, destroy or deface any real or personal property or advocates or urges another person to do so, if there is reasonable cause to believe that the property damage will occur.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant specifically intended to intimidate or harass (another person / a group of persons) because of that (person's / group's) actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression). The state must prove not only that the defendant had the specific intent to intimidate or harass <identify complainant(s)> but that (he/she) did so because of (his/her/their) actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression).

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

The state need not prove that <identify complainant(s)> (was/were) actually of a certain (race / religion / ethnicity / disability / sexual orientation / gender identity or expression). It is sufficient for the state to prove beyond a reasonable doubt that the defendant perceived <identify complainant(s)> to be of a certain (race / religion / ethnicity / disability / sexual orientation / gender identity or expression).

[<Insert appropriate definition(s):>

- "Disability" means (physical disability / mental disability / intellectual disability<sup>1</sup>).
- "Physical disability" means any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, blindness, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.
- "Mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.

- "Intellectual disability" means a significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose and standardized on a significantly adequate population and administered by a person or persons formally trained in test administration; "significantly subaverage" means an intelligence quotient more than two standard deviations below the mean for the test; "adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group; and "developmental period" means the period of time between birth and the eighteenth birthday.
- "Sexual orientation" means having a preference for heterosexuality, homosexuality or bisexuality, having a history of such preference or being identified with such preference.<sup>2</sup>
- "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's assigned sex at birth.

### **Element 2 - Damage to property**

The second element is that the defendant *<insert as appropriate:>*

- **§ 53a-181l (a) (1):** damaged, destroyed or defaced any real or personal property. "Real property" means real estate or land.
- **§ 53a-181l (a) (2):** threatened, by word or act, to damage, destroy or deface any real or personal property, if there is reasonable cause to believe that such property damage will occur. The property damage does not have to have occurred. It is only necessary that there was reasonable cause to believe that it would occur. "Reasonable cause" means whether an ordinary person in the same circumstances would believe that it would occur.
- **§ 53a-181l (a) (2):** advocated or urged another person to damage, destroy or deface any real or personal property, if there is reasonable cause to believe that such property damage will occur. The property damage does not have to have occurred. It is only necessary that there was reasonable cause to believe that it would occur. "Reasonable cause" means whether an ordinary person in the same circumstances would believe that it would occur.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) specifically intended to intimidate or harass another (person / group) because of such (person's / group's) actual or perceived (race / religion / ethnicity / disability / sexual orientation / gender identity or expression), and 2) *<insert specific allegations re physical contact or property damage>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of intimidation based on bigotry or bias in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Public Acts 2011, No. 11-129, § 20, replaced the term "mental retardation" with "intellectual disability," effective October 1, 2011.

<sup>2</sup> General Statutes § 46a-81a.

***Commentary***

The threats proscribed by § 53a-181k (a) (3) are limited to "true threats." *State v. Skidd*, 104 Conn. App. 46, 54 (2007). See the discussion of true threats in the Introduction to Breach of Peace and Disorderly Conduct.

## **6.11 RISK OF INJURY AND OTHER OFFENSES AGAINST CHILDREN**

### **6.11 Introduction to Risk of Injury**

**6.11-1 Risk of Injury to a Minor (Situation Prong) -- § 53-21 (a) (1)**

**6.11-2 Risk of Injury to a Minor (Act Prong) -- § 53-21 (a) (1)**

**6.11-3 Risk of Injury to a Minor (Sexual Contact) -- § 53-21 (a) (2)**

**6.11-4 Sale or Buying of a Child -- § 53-21 (a) (3)**

**6.11-5 Abandoning a Child under 6 Years of Age -- § 53-23**

**6.11-6 Substitution of Children -- § 53a-99**

## 6.11 Introduction to Risk of Injury

Revised to December 1, 2007 (modified June 12, 2009)

Subsection (a) (1) of § 53-21 has long been interpreted as having two parts, commonly called the "situation" prong and the "act" prong. See, e.g., *State v. Owens*, 100 Conn. App. 619, 635 n.12, cert. denied, 282 Conn. 927 (2007). These two parts proscribe "two general types of behavior likely to injure physically or to impair the morals of a minor under sixteen years of age: (1) deliberate indifference to, acquiescence in, or the creation of situations inimical to the minor's moral or physical welfare . . . and (2) acts directly perpetrated on the person of the minor and injurious to his moral or physical well-being." (Citations omitted.) *State v. Dennis*, 150 Conn. 245, 250 (1963). "Although both parts of the statute are intended to protect children from predatory and potentially harmful conduct of adults, the two parts nonetheless are directed at different kinds of harm to children." *State v. Payne*, 240 Conn. 766, 774 (1997). The court's instruction must be limited to that portion of the statute that was charged. *State v. James*, 211 Conn. 555, 583 (1989).

### ***The situation prong***

"[T]he first part of § 53-21 prohibits the wilful creation of a 'situation' likely to impair the health of a child and thus encompasses the protection of the body as well as the safety and security of the environment in which the child exists, and for which the adult is responsible." *State v. Payne*, supra, 240 Conn. 774.

The elements under the situation prong are 1) the defendant's conduct was wilful or unlawful, 2) the defendant created, acquiesced in or was deliberately indifferent to a situation that was likely to injure a child; and 3) the child was younger than sixteen years of age at the time. *State v. Eastwood*, 83 Conn. App. 452, 475, cert. denied, 286 Conn. 914-915 (2004). As for the second element, the statute lists three types of injuries: to "the life or limb" of the child, to the health of the child, or to the morals of the child. The court should instruct the jury on only the type or types of injuries alleged and supported by evidence. *State v. Burton*, 258 Conn. 153, 162-63 (2001) (trial court improperly read entire statute).

### ***The act prong***

The act prong is limited to protecting the bodily integrity of a child. Thus, the act has to be directly perpetrated on the person of the child. *State v. Schriver*, 207 Conn. 456, 466-68 (1988).

The elements under the "act" prong are: 1) the defendant performed an act that was likely to impair the health or morals of a child, 2) the defendant had a general intent to perform such act, and 3) the child was less than sixteen years of age at the time of the incident. *State v. Cansler*, 54 Conn. App. 819, 839 (1999); see also *State v. McClary*, 207 Conn. 233, 240 (1988) (the intent required is only the general intent to do the act; no intent to harm the child is required).

In a challenge to the constitutionality of this section based on vagueness, the Supreme Court, in *State v. Schriver*, supra, 207 Conn. 456, held that it was facially vague because it "fail[ed] to articulate a definite standard for determining whether the conduct of the defendant in this case is permitted or prohibited." The focus of the statute was not "measurably narrowed by the phrase 'likely to impair.'" In its ordinary meaning, this phrase would seem to authorize police officers and jurors to determine culpability subjectively, on an ad hoc basis. Rather than

providing objective certainty, this phrase compounds the vagueness of the statute because it invites jurors to base criminal liability on their own moral predilections and personal predictions of likely harm." *Id.*, 461-62.

The *Schrivver* Court imposed the following gloss on the statute: "if the risked impairment is to the child's health, [the act prong] proscribes 'deliberate, blatant abuse' that imperils the child's physical, rather than mental, well-being. If the risked impairment is to the child's morals, [the act prong] proscribes acts performed 'in a sexual and indecent manner.'" *State v. Kulmac*, 230 Conn. 43, 64 n.15 (1994); see also *State v. Zwirn*, 210 Conn. 582, 588 (1989) (for an act of physical contact to be likely to impair the morals of a child, the act must be committed in a sexually indecent manner).

### ***Subsection (a) (2)***

Subsection (a) (2) was added by Public Act No. 95-142. It imposes punishment on "any person who has contact with the intimate parts . . . of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child." This subsection "made express in its terms what [the Supreme Court] previously had defined . . . as conduct constituting risk of injury to a child." *State v. James G.*, 268 Conn. 382, 408 (2004). In other words, this new subsection did not create new liability because such acts were already punishable under the act prong.

The legislative history of Public Act No. 95-142 includes the following: "[W]hat the first part of the bill deals with is the change in the definition of risk of injury to a minor, and we have a, separating into sections that deal with a, a sexual component and a non-sexual component, so that the offense can be more carefully delineated." 38 S. Proc., Pt. 5, 1995 Sess., pp. 1768-69, remarks of Senator Looney.

Although this new subsection separated out explicitly sexual contact, the *Schrivver* gloss remains on the "act" prong of subsection (a) (1), which is not limited to physical touching of the minor's private parts. A defendant who deliberately and improperly touches the private parts of a minor violates § 53-21 (a) (2), whereas conduct that is perpetrated on the person of the child in a sexual and indecent manner is a violation of subsection (a) (1). See *State v. Burton*, 258 Conn. 153, 159 (2001) (defendant held child in car, using graphically obscene language, and attempted to kiss her and undress her).

### ***Definitions***

**Intimate parts.** The definition of "intimate parts" in § 53a-65 is specifically incorporated by the statute. The definition of "sexual contact" from § 53a-65 can properly be applied because the phrase "contact with the intimate parts . . . in a sexual and indecent manner" "cannot qualify as anything other than 'sexual' contact." *State v. James G.*, 268 Conn. 382, 415 (2004).

**Health.** As mentioned above, under the "situation" prong of § 53-21 (a) (1), injury may occur to "life or limb," morals, or health. "Health" in this context has been interpreted to include the mental health of a child, because if it were limited to physical health, then "life or limb," which is ordinarily understood to mean physical condition, would be superfluous. *State v. Payne*, 240 Conn. 766, 772 (1997).

Under the "act" prong, which only prohibits acts likely to impair health or morals, a risk of injury to a child's mental health, with no risk to the child's physical health, is not within the

meaning of 'health'" *State v. Kulmac*, 230 Conn. 43, 72-73 (1994); *State v. Schriver*, 207 Conn. 456, 466-67 (1988). Because of the similar wording, this is presumably also true of "health" in § 53-21 (a) (2).

**Morals.** "[I]njury to morals in the first part of § 53-21 is not limited to morals put at risk by indecent sexual contact with private parts." *State v. Payne*, 240 Conn. 766, 782-83 (1997). In *Payne*, the Court held that it was proper to instruct the jury to apply community standards to determine whether a situation would pose a risk of injuring a child's morals. *Id.*

**Likely.** "The common understanding of the term 'likely' . . . ordinarily conveys a degree of certitude as to realization that is in conformity with a definition of 'probable,' but that counsels against an understanding of its meaning as merely 'possible.'" *State v. Romero*, 269 Conn. 481, 492 (2004).

### ***Lesser included offenses***

Risk of injury to a minor under § 53-21 (a) (2) has been held to be a separate offense from sexual assault in various degrees. *State v. Alvaro F.*, 291 Conn. 1, 7-15 (2009) (4th degree); *State v. Stephen O.*, 106 Conn. App. 717, cert. denied, 287 Conn. 916 (2008) (3rd degree); *State v. Bletsch*, 281 Conn. 5, 28-29 (2007) (2nd degree); *State v. Rivera*, 84 Conn. App. 245, 248-50, cert. denied, 271 Conn. 934 (2004) (2nd degree).

Promoting prostitution under § 53a-86 is a separate offense from risk of injury to a minor. *State v. Aldrich*, 53 Conn. App. 627, 635-36, cert. denied, 250 Conn. 909 (1999).

### ***Confidentiality of the complainant's name and address***

General Statutes § 54-86e provides that the name, address and other identifying information of a victim of risk of injury are confidential. These instructions refer only to "the child" or "the minor." The court may use initials or some other identifier when necessary to refer to the complainant.

### ***Other***

Attempt to commit risk of injury to a minor is a cognizable crime. *State v. Sorabella*, 277 Conn. 155, 172-74, cert. denied, 549 U.S. 821, 127 S.Ct. 131, 166 L.Ed.2d 36 (2006).

The Connecticut Supreme Court held that General Statutes § 53-21 is concerned only with the age of the victim and, as a result, criminalizes certain acts when the victim is under sixteen years of age. *State v. Jason B.*, 248 Conn. 543, 564-65, cert. denied, 528 U.S. 967, 120 S.Ct. 406, 145 L.Ed.2d 316 (1999). As such, the defendant's age is irrelevant to determining criminal liability. *Id.*, 565.

## 6.11-1 Risk of Injury to a Minor (Situation Prong) -- § 53-21 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with risk of injury to a minor. The statute defining this offense imposes punishment on any person who wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the (life or limb of such child is endangered / the health of such child is likely to be injured / the morals of such child are likely to be impaired).<sup>1</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Placed minor in a situation**

The first element is that the defendant wilfully or unlawfully caused or permitted a minor child to be placed in a situation inimical to the child's (moral / physical) welfare. The statute requires wilfulness or unlawfulness in causing or permitting the child to be placed in such a situation. This means that the conduct of the person is deliberately indifferent to, acquiesces in, or creates a situation inimical to the child's (moral / physical) welfare.

"Wilfully" means intentionally or deliberately.<sup>2</sup> "Unlawfully" means without legal right or justification. Causing or permitting a situation to arise within the meaning of this statute requires conduct on the part of the defendant that brings about or permits the situation to arise when the defendant had such control or right of control over the child that the defendant might have reasonably prevented it.

### **Element 2 - Risk to minor**

The second element is that the situation (endangered the child's life or limb / was likely to injure (his/her) health<sup>3</sup> / was likely to impair (his/her) morals). [As used here, "morals" means living, acting and thinking in accordance with those principles and precepts that are commonly accepted among us as right and decent.<sup>4</sup>]

I want to stress that the state does NOT have to prove that the defendant actually did (physically injure / injure the health of / impair the morals of) the child. Rather, the state must show only that the defendant's behavior was LIKELY to have done so. "Likely" means in all probability.<sup>5</sup> Thus, the state must show that it was probable that the conduct of the defendant would (physically injure / injure the health of / impair the morals of) the child. There is no requirement that the state prove actual harm to the child.

[<Insert if appropriate:><sup>6</sup> The defendant need not have had the specific intent to (physically injure / injure the health of / impair the morals of) the child, only the general intent to do the act that resulted in placing the child in the situation. <See Intent: General, Instruction 2.3-1.>]

### **Element 3 - Minor under 16 years of age**

The third element is that at the time of the incident, the minor child was under the age of sixteen years. This means that the child had not yet had (his/her) sixteenth birthday.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant wilfully or unlawfully caused or permitted the minor to be placed in a situation, 2) the situation (endangered (his/her) life or limb / was likely to injure (his/her) health / was likely to impair (his/her) morals), and 3) the minor was under 16 years of age at the time.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of risk of injury to a minor, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The court should instruct the jury on only the type or types of injuries alleged and supported by the evidence. *State v. Burton*, 258 Conn. 153, 162-63 (2001) (trial court improperly read entire statute).

<sup>2</sup> "Under the situation portion of § 53-21 (1), wilful means doing a forbidden act *purposefully* in violation of the law." (Emphasis in original; internal quotation marks omitted.) *State v. Padua*, 273 Conn. 138, 161 (2005).

<sup>3</sup> "Health" under this portion of the statute includes mental health. *State v. Payne*, 240 Conn. 766, 772 (1997).

<sup>4</sup> See *State v. Payne*, 240 Conn. 766, 782-83 (1997) (not improper to instruct jury to apply community standards).

<sup>5</sup> See *State v. Romero*, 269 Conn. 481, 492 (2004).

<sup>6</sup> See *State v. Pierson*, 201 Conn. 211, 217 (1986) (instruction need not include principle of general intent unless evidence suggests that the defendant's conduct was involuntary).

## 6.11-2 Risk of Injury to a Minor (Act Prong) -- § 53-21 (a) (1)

Revised to December 1, 2007 (modified April 23, 2010)

The defendant is charged [in count \_\_\_] with risk of injury to a minor. The statute defining this offense imposes punishment on any person who does any act likely to impair the (health / morals) of a child under the age of sixteen years.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Act

The first element is that that the defendant did an act that was likely to impair the (health / morals) of the child.

[<If the alleged injury is to the child's health:> To be likely to impair the health of a minor, the statute requires that the defendant committed blatant physical abuse that endangered the child's physical well-being.<sup>1</sup>]

[<If the alleged injury is to the child's morals:> To be likely to impair the morals of a minor, the act must be performed in a sexual and indecent manner.<sup>2</sup> "Sexual" means having to do with sex and "indecent" means offensive to good taste or public morals. As used here, "morals" means living, acting and thinking in accordance with those principles and precepts that are commonly accepted among us as right and decent.<sup>3</sup>]

I want to stress that the state does NOT have to prove that the defendant actually did impair the (health / morals) of the child. Rather, the state must show only that the defendant's behavior was LIKELY to have done so. "Likely" means in all probability.<sup>4</sup> Thus, the state must show that it was probable that the conduct of the defendant would (physically injure / injure the health of / impair the morals of) the child. There is no requirement that the state prove actual harm to the child.

[<Insert if appropriate:><sup>5</sup> The defendant need not have had the specific intent to impair the (health / morals) of the child, only the general intent to do the act. <See Intent: General, Instruction 2.3-1.>]

### Element 2 - Minor under 16 years of age

The second element is that at the time of the incident, the child was under the age of sixteen years. This means that the child had not yet had (his/her) sixteenth birthday.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant did an act that was likely to impair the (health / morals) of the child, and 2) the minor was under 16 years of age at the time.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of risk of injury to a minor, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See *State v. Kulmac*, 230 Conn. 43, 64 n.15 (1994); *State v. Schriver*, 207 Conn. 456, 466-67 (1988).

<sup>2</sup> *State v. Kulmac*, 230 Conn. 43, 64 n.15 (1994); *State v. Zwirn*, 210 Conn. 582, 588 (1989); *State v. Schriver*, 207 Conn. 456, 466-67 (1988).

<sup>3</sup> See *State v. Payne*, 240 Conn. 766, 782-83 (1997) (not improper to instruct jury to apply community standards).

<sup>4</sup> See *State v. Romero*, 269 Conn. 481, 492 (2004).

<sup>5</sup> See *State v. Pierson*, 201 Conn. 211, 217 (1986) (instruction need not include principle of general intent unless evidence suggests that the defendant's conduct was involuntary).

#### ***Commentary***

In a case of "blatant physical abuse," a defendant who is also a parent of the victim, or standing in loco parentis, may raise the defense of parental justification to claim that the force used against the child was reasonable discipline. *State v. Nathan J.*, 294 Conn. 243, 260 (2009).

## 6.11-3 Risk of Injury to a Minor (Sexual Contact) -- § 53-21 (a) (2)

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with risk of injury to a minor. The statute defining this offense imposes penalties on any person who has contact with the intimate parts of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Contact with intimate parts**

The first element is that the defendant had contact with the intimate parts of the minor or subjected the minor to contact with the defendant's intimate parts. Intimate parts means the genital area, groin, anus, inner thighs, buttocks or breasts. "Contact" means the touching of intimate parts. The state must prove either that *<insert as appropriate:>*

- the defendant had contact with the child's intimate parts.
- the defendant subjected the child to contact with the defendant's intimate parts.

There need not be a touching of all the intimate parts. It is sufficient if any one of the intimate parts is touched.

### **Element 2 - Of a sexual and indecent manner**

The second element is that the contact with the intimate parts took place in a sexual and indecent manner, as opposed to an innocent touching or an accidental, inadvertent or reflexive touching. "Sexual" means having to do with sex and "indecent" means offensive to good taste or public morals.

### **Element 3 - Likely to impair health or morals**

The third element is that the contact, which was sexual and indecent in nature, was likely to injure or weaken the (health / morals) of the child. *<Include appropriate definition(s):>*

- The health of the child refers to the child's well-being.
- As used here, "morals" means living, acting and thinking in accordance with those principles and standards which are commonly accepted among us as right and decent.<sup>1</sup>

I want to stress that the state does NOT have to prove that the defendant actually did impair the (health / morals) of the child. Rather, the state must show that the defendant's behavior was **LIKELY** to have done so. "Likely" means in all probability.<sup>2</sup> Thus, the state must show that it was probable that the sexual and indecent behavior of the defendant would injure or weaken the child's (health / morals). There is no requirement that the state prove actual harm to the child's (health / morals).

[<Insert if appropriate:><sup>3</sup> The defendant need not have had the specific intent to impair the health or morals of the child, only the general intent to perform the sexual and indecent act. <See *Intent: General, Instruction 2.3-1.*>]

#### **Element 4 - Minor under 16 years of age**

The fourth element is that at the time of the incident, the minor was under the age of sixteen years. This means that the child had not yet had (his/her) sixteenth birthday when the alleged contact took place.

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant had contact with the intimate parts of the child or subjected the child to contact with the defendant's intimate parts, 2) that the contact with the intimate parts took place in a sexual and indecent manner, 3) the contact was likely to impair the (health / morals) of the child, and 4) that the child was under sixteen years of age at the time.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of risk of injury to a minor, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See *State v. Payne*, 240 Conn. 766, 782-83 (1997) (not improper to instruct jury to apply community standards).

<sup>2</sup> See *State v. Romero*, 269 Conn. 481, 492 (2004).

<sup>3</sup> See *State v. Pierson*, 201 Conn. 211, 217 (1986) (instruction need not include principle of general intent unless evidence suggests that the defendant's conduct was involuntary).

#### ***Commentary***

##### ***Sentence Enhancer***

Effective July 1, 2007, § 53-21 (a) imposes an enhanced sentence for a violation of subsection (a) (2) if the victim of the offense is under thirteen years of age. The jury must find this fact proved beyond a reasonable doubt in whatever format it is presented to them. See Sentence Enhancers, Instruction 2.11-4.

## 6.11-4 Sale or Buying of a Child -- § 53-21 (a) (3)

Revised to December 1, 2007

**Note:** This statute criminalizes both sides of the transaction. Tailor the instruction to specify whether it is the seller or the buyer being prosecuted.

The defendant is charged [in count \_\_\_] with sale of a minor child. The statute defining this offense imposes punishment on any person who *<insert as appropriate:>*

- permanently transfers the legal or physical custody of a child under the age of sixteen years to another person for money or other valuable consideration.
- acquires or receives the legal or physical custody of a child under the age of sixteen years from another person upon payment of money or other valuable consideration to such other person or a third person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Age of child

The first element is that at the time of the incident, the child was under the age of sixteen years. This means that the child had not yet had (his/her) sixteenth birthday.

### Element 2 - Custody transferred

The second element is that the defendant *<insert as appropriate:>*

- transferred the legal or physical custody of the child to another person.
- acquired or received the legal or physical custody of the child from another person.

*<Insert specific allegations of transaction.>*

### Element 3 - For consideration

The third element is that *<insert as appropriate:>*

- the transfer was for money or other valuable consideration.
- the acquisition or receipt was made upon payment of money or other valuable consideration to another person.

*<Insert specific allegations of consideration.>*

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the child involved in the transaction was under 16 years of age, 2) the defendant *<insert specific allegations of transaction>*, and 3) (the transfer was made for money or other valuable consideration / the child was acquired upon the payment of money or other valuable consideration to *<insert name of person>*).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the sale of a minor child, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

*Commentary*

The statute provides an exception for any transfer or acquisition of a child that would constitute an adoption proceeding, if such proceeding complies with the provisions of chapter 803.

## 6.11-5 Abandoning a Child under 6 Years of Age -- § 53-23

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with abandoning a child under the age of six years. The statute defining this offense imposes punishment on any person having the charge of any child under the age of six years who exposes such child in any place, with intent wholly to abandon such child.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Charge of child**

The first element is that the defendant had charge of a child. To "have charge" means to have care, custody, or supervision of the child, to have an obligation or responsibility to the child, or to have been a person entrusted with the child's care or management.

### **Element 2 - Child under 6 years of age**

The second element is that child was under the age of six years. This means that the child had not yet had (his/her) sixth birthday.

### **Element 3 - Abandonment**

The third element is that the defendant exposed the child with the intent of wholly abandoning the child. To "expose" in this context means to take away food, shelter and protection. To "abandon" means to withdraw one's support or help from another in spite of a duty, allegiance, or responsibility. "Wholly" means completely. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant had charge of a child, 2) the child was under six years of age, and 3) the defendant exposed the child with the intent of wholly abandoning the child.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of abandoning a child under six years of age, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

Subsection (b) of the statute provides the following exception to culpability: "The act of a parent or lawful agent of a parent leaving an infant thirty days or younger with a designated employee pursuant to Section 17a-58 shall not constitute a violation of this section." A "designated employee" as set out in Section 17a-58 and defined in Section 17a-57 means emergency room nursing staff designated to take physical custody of an infant voluntarily

surrendered by a parent or agent. "Where exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

## 6.11-6 Substitution of Children -- § 53a-99

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with substitution of children. The statute defining this offense reads in pertinent part as follows:

a person is guilty of substitution of children when, having been temporarily entrusted with a child less than one year old and, intending to deceive a parent, guardian or other lawful custodian of such child, (he/she) substitutes, produces or returns to such parent, guardian or custodian a child other than the one entrusted.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Temporary entrustment**

The first element is that the defendant had been temporarily entrusted with a child. "To entrust" means to give something over to another, in this case, the child, for care or protection for a temporary or limited time.

### **Element 2 - Child under 1 year of age**

The second element is that the child was less than one year old. This means that the child had not yet had (his/her) first birthday when the conduct is alleged to have taken place.

### **Element 3 - Intent**

The third element is that the defendant intended to deceive the child's parent, guardian or other lawful custodian by substituting, producing or returning a different child other than the one entrusted. To "deceive" is to mislead or cause a person to believe what is not true, in this case that the substituted child is the child originally entrusted to the defendant.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant had been temporarily entrusted with a child, 2) the child was under one year of age, and 3) the defendant intended to deceive that child's parent, guardian or other lawful custodian by substituting, producing or returning a different child other than the one entrusted.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of substitution of a child, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **6.12 COERCION**

**6.12-1 Coercion -- § 53a-192**

**6.12-2 Trafficking in Persons -- § 53a-192a**

## 6.12-1 Coercion -- § 53a-192

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with coercion. The statute defining this offense reads in pertinent part:

a person is guilty of coercion when (he/she) compels or induces another person to (engage in conduct which such other person has a legal right to abstain from engaging in / abstain from engaging in conduct in which such other person has a legal right to engage) by means of instilling in such other person a fear that, if the demand is not complied with, the actor or another will *<insert appropriate subsection:>*

- § 53a-192 (a) (1): commit any criminal offense.
- § 53a-192 (a) (2): accuse any person of a criminal offense.
- § 53a-192 (a) (3): expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute.
- § 53a-192 (a) (4): take or withhold action as an official, or cause an official to take or withhold action.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Compelled or induced

The first element is that the defendant compelled or induced another person (to do something that person had the right not to do / not to do something that person had the right to do).

"Induce" means to move to action by persuasion or by influence. "Compel" means to force or constrain to do something. *<Insert specific allegations.>*

The defendant must have specifically intended to compel or induce the other person *<insert specific allegations>*. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### Element 2 - By means of fear

The second element is that the defendant did this by instilling in the person a fear that, if the demand was not complied with, then the defendant or another person would *<insert as appropriate:>*

- § 53a-192 (a) (1): commit any criminal offense.
- § 53a-192 (a) (2): accuse any person of a criminal offense.
- § 53a-192 (a) (3): expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute.
- § 53a-192 (a) (4): take or withhold action as an official, or cause an official to take or withhold action.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant compelled or induced *<insert name of person>* to *<insert specific allegations>*, and 2) (he/she) did so by instilling in the person a fear that, if the demand was not complied with, then the defendant or another person would *<insert specific allegations>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of coercion, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary***

See *State v. Payne*, 40 Conn. App. 1, 14-17 (1995), aff'd on other grounds, 240 Conn. 766 (1997); *State v. Nicoletti*, 8 Conn. App. 351, 353-55 (1986).

Subsection (b) of the statute provides the following affirmative defense: "It shall be an affirmative defense to prosecution based on subdivision (2), (3) or (4) of subsection (a) of this section that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other person to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior or making good a wrong done."

***Sentence Enhancer***

Section 53a-192 (c) provides an enhanced penalty if the threat is to commit a felony. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 6.12-2 Trafficking in Persons -- § 53a-192a (a) (1)

Revised November 6, 2014

**Note: This instruction is for crimes committed on or after October 1, 2013. Public Act No.13-166, § 2, substantially revised the definition of the offense. For crimes committed before October 1, 2013, see Instruction 6.12-2A in the Archive.**

The defendant is charged [in count \_\_\_] with trafficking in persons. The statute defining this offense reads in pertinent part:

a person is guilty of trafficking in persons when such person compels or induces another person to (engage in conduct involving more than one occurrence of sexual contact with one or more third persons / provide labor or services that such person has a legal right to refrain from providing), by means of (the use of force against such other person or a third person, or by the threat of use of force against such other person or a third person / fraud / coercion).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Compelled or induced**

The first element is that the defendant compelled or induced another person to

- engage in conduct involving more than one occurrence of sexual contact with one or more third persons.
- provide labor or services that the person has a legal right to refrain from providing.

"Compel" means to force or constrain to do something. "Induce" means to move to action by persuasion or by influence. *<Insert specific allegations.>*

"Sexual contact" means any contact with the intimate parts of another person.

The defendant must have specifically intended to compel or induce the other person *<insert specific allegations>*. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Element 2 - By means of**

The second element is that the defendant did this by

- (the use of force / the threat of use of force) against the person or a third person.
- fraud. The meaning of "fraud," both in its legal usage and its common usage, is the same: a deliberately planned purpose and intent to cheat or deceive or unlawfully deprive someone of some advantage, benefit or property.
- coercion. *<See Coercion, Instruction 6.12-1.>*

*<Insert specific allegations.>*

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant specifically intended to compel or induce *<insert name of complainant>* to (engage in conduct that constitutes prostitution / provide labor or services), and 2) did so by ((the use of force / the threat of the use of force) against *<insert name of complainant or third person>* / fraud / coercion).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of trafficking in persons, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **6.13 STRANGULATION**

**6.13-1 Strangulation in the First Degree -- §  
53a-64aa**

**6.13-2 Strangulation in the Second Degree -- §  
53a-64bb**

**6.13-3 Strangulation in the Third Degree -- §  
53a-64cc**

## 6.13-1 Strangulation in the First Degree -- § 53a-64aa

Revised to April 23, 2010 (modified November 6, 2014)

The defendant is charged [in count \_\_\_] with strangulation in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of strangulation in the first degree when such person commits strangulation in the second degree and *<insert appropriate subsection:>*

- **§ 53a-64aa (a) (1) (A):** in the commission of such offense, such person uses or attempts to use a dangerous instrument.
- **§ 53a-64aa (a) (1) (B):** in the commission of such offense, such person causes serious physical injury to such other person.
- **§ 53a-64aa (a) (2):** such person has previously been convicted of a violation of strangulation in the first or second degree.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed strangulation in the second degree**

The first element is that the defendant committed strangulation in the second degree. *<Insert the elements from Strangulation in the Second Degree, Instruction 6.13-2.>*

### **Element 2 - Additional factor**

The second element is that the defendant *<insert as appropriate:>*

- in the commission of committing strangulation, the defendant used or attempted to use a dangerous instrument. "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.
- in the commission of committing strangulation, the defendant caused serious physical injury to the person. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ.
- has previously been convicted of strangulation in either the first or second degree. "Convicted" means having a judgment of conviction entered by a court of competent jurisdiction.

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for strangulation in the second degree>*, and that *<insert additional factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of strangulation in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## ***Commentary***

This offense was created by Public Acts 2007, 07-123, § 8, effective October 1, 2007.

Subsection (b) provides that "[n]o person shall be found guilty of strangulation in the first degree and unlawful restraint or assault upon the same incident, but such person may be charged and prosecuted for all three offenses upon the same information. For the purposes of this section, 'unlawful restraint' means a violation of section 53a-95 or 53a-96, and 'assault' means a violation of section 53a-59, 53a-59a, 53a-59b, 53a-59c, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-61 or 53a-61a." See *State v. Graham S.*, 149 Conn. App. 334, 345, cert. denied, 312 Conn. 912 (2014) (when defendant convicted of strangulation, unlawful restraint, and assault on the same facts, the strangulation conviction should stand).

## 6.13-2 Strangulation in the Second Degree - § 53a-64bb

New, June 13, 2008 (modified November 6, 2014)

**Note: Public Acts 2007, 07-123, § 9, which created this offense, became effective October 1, 2007.**

The defendant is charged [in count \_\_\_] with strangulation in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of strangulation in the second degree when such person restrains another person by the neck or throat with the intent to impede the ability of such other person to breathe or restrict blood circulation of such other person and such person impedes the ability of such other person to breathe or restricts blood circulation of such other person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Restrained another by the neck or throat**

The first element is that the defendant restrained <insert name of complainant> by the neck or throat. "Restrain" means to restrict a person's movement.

### **Element 2 - Intent**

The second element is that the defendant specifically intended to impede <insert name of complainant>'s ability to breathe or to restrict (his/her) blood circulation. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Element 3 - Impeded breathing or restricted blood circulation**

The third element is that, acting with that intent, the defendant impeded <insert name of complainant>'s ability to breathe or restricted (his/her) blood circulation.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant restrained <insert name of complainant> by the neck or throat, 2) (he/she) specifically intended to impede <insert name of complainant>'s ability to breathe or to restrict (his/her) blood circulation, and 3) (he/she) impeded <insert name of complainant>'s ability to breathe or restricted (his/her) blood circulation.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of strangulation in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary***

This offense was created by Public Acts 2007, 07-123, § 9, effective October 1, 2007.

Subsection (b) provides that "[n]o person shall be found guilty of strangulation in the second degree and unlawful restraint or assault upon the same incident, but such person may be charged and prosecuted for all three offenses upon the same information. For the purposes of this section, 'unlawful restraint' means a violation of section 53a-95 or 53a-96, and 'assault' means a violation of section 53a-59, 53a-59a, 53a-59b, 53a-59c, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-61 or 53a-61a." See *State v. Graham S.*, 149 Conn. App. 334, 345, cert. denied, 312 Conn. 912 (2014) (when defendant convicted of strangulation, unlawful restraint, and assault on the same facts, the strangulation conviction should stand).

## 6.13-3 Strangulation in the Third Degree - § 53a-64cc

New, June 13, 2008 (modified November 6, 2014)

The defendant is charged [in count \_\_\_] with strangulation in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of strangulation in the third degree when such person recklessly restrains another person by the neck or throat and impedes the ability of such other person to breathe or restricts blood circulation of such other person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Restrained another by the neck or throat**

The first element is that the defendant restrained <insert name of complainant> by the neck or throat. "Restrain" means to restrict a person's movement.

### **Element 2 - Recklessness**

The second element is that the defendant acted recklessly. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <Insert Recklessness, Instruction 2.3-4.>

### **Element 3 - Impeded breathing or restricted blood circulation**

The third element is that the defendant impeded <insert name of complainant>'s ability to breathe or restricted (his/her) blood circulation.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant restrained <insert name of complainant> by the neck or throat, 2) (he/she) acted recklessly, and 3) (he/she) impeded <insert name of complainant>'s ability to breathe or restricted (his/her) blood circulation.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of strangulation in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

This offense was created by Public Acts 2007, 07-123, § 10, effective October 1, 2007.

Subsection (b) provides that "[n]o person shall be found guilty of strangulation in the third degree and unlawful restraint or assault upon the same incident, but such person may be charged and prosecuted for all three offenses upon the same information. For the purposes of this section, 'unlawful restraint' means a violation of section 53a-95 or 53a-96, and 'assault' means a violation of section 53a-59, 53a-59a, 53a-59b, 53a-59c, 53a-60, 53a-60a, 53a-60b, 53a-60c,

53a-61 or 53a-61a." See *State v. Graham S.*, 149 Conn. App. 334, 345, cert. denied, 312 Conn. 912 (2014) (when defendant convicted of strangulation, unlawful restraint, and assault on the same facts, the strangulation conviction should stand).

## **PART 7: SEX CRIMES**

**7.1 SEXUAL ASSAULT**

**7.2 EVIDENCE IN SEXUAL ASSAULT CASES**

**7.3 PROSTITUTION**

**7.4 OBSCENITY**

**7.5 VOYEURISM AND PUBLIC INDECENCY**

**7.6 AGAINST CHILDREN**

**7.7 CHILD PORNOGRAPHY**

**7.8 SEX OFFENDER REGISTRATION**

## **7.1 SEXUAL ASSAULT**

### **7.1 Introduction to Sexual Assault**

**7.1-1 Sexual Assault in the First Degree -- § 53a-70 (a) (1)**

**7.1-2 Sexual Assault in the First Degree -- § 53a-70 (a) (2)**

**7.1-3 Sexual Assault in the First Degree -- § 53a-70 (a) (3)**

**7.1-4 Sexual Assault in the First Degree -- § 53a-70 (a) (4)**

**7.1-5 Aggravated Sexual Assault in the First Degree -- § 53a-70a**

**7.1-6 Sexual Assault in Spousal or Cohabiting Relationship -- § 53a-70b**

**7.1-7 Sexual Assault in the Second Degree -- § 53a-71**

**7.1-8 Sexual Assault in the Third Degree -- § 53a-72a (a) (1)**

**7.1-9 Sexual Assault in the Third Degree -- § 53a-72a (a) (2)**

**7.1-10 Sexual Assault in the Third Degree with a Firearm -- § 53a-72b**

**7.1-11 Sexual Assault in the Fourth Degree -- § 53a-73a (a) (1) and (a) (3) through (9)**

**7.1-12 Sexual Assault in the Fourth Degree -- §  
53a-73a (a) (2)**

**7.1-13 Affirmative Defense to Sexual Assault -- §  
53a-67**

**7.1-14 Aggravated Sexual Assault of a Minor -- §  
53a-70c**

## 7.1 Introduction to Sexual Assault

Revised to November 17, 2015

"The state once had the burden of proving that the victim had earnestly resisted sexual intercourse. . . . The revision [made by Public Acts 1975, No. 75-619] altered the rape statute by deleting the element of 'forcible compulsion,' and its concomitant meaning of 'physical force that overcomes earnest resistance.' . . . The statute no longer requires that the state prove that physical force overcame earnest resistance, which was used in the past as a prerequisite to proving nonconsensual carnal knowledge by force. . . . Whereas forcible compulsion was once proved by demonstrating that force had overcome resistance, the state is now required to prove that it was the use of force or its threat which caused the victim to engage in sexual intercourse, and does not by its express language require that resistance be proven." *State v. Mackor*, 11 Conn. App. 316, 321-22 (1987). "Proof of resistance was required in the past as a mode of proving that the intercourse was nonconsensual. Under the present statute, the lack of consent is subsumed by proof of the use of force or the threat of the use of force." *Id.*, 323. "Nonconsent is not an element of the crime of General Statutes § 53a-70 (a), but is embodied within the proof required of the use of force or the threat of the use of force." *Id.*; see also *State v. Griffin*, 97 Conn. 169, 186, cert. denied, 280 Conn. 925 (2006); *State v. White*, 55 Conn. App. 412, 418-21, cert. denied, 252 Conn. 908 (1999).

Consent, often raised as a defense, is more exactly a denial of the element of compulsion. "It is likely that juries in considering the defense of consent in sexual assault cases, though visualizing the issue in terms of actual consent by the complainant, have reached their verdicts on the basis of inferences that a reasonable person would draw from the conduct of the complainant and the defendant under the surrounding circumstances. It is doubtful that jurors would ever convict a defendant who had in their view acted in reasonable reliance upon words or conduct of the complainant indicating consent, even though there had been some concealed reluctance on her part. If a defendant were concerned about such a possibility, however, he would be entitled, once the issue is raised, to request a jury instruction that the state must prove beyond a reasonable doubt that the conduct of the complainant would not have justified a reasonable belief that she had consented." *State v. Smith*, 210 Conn. 132, 141 (1989). The Supreme Court clarified its holding in *Smith* in *Efstathiadis v. Holder*, 317 Conn. 482 (2015), stating that the *Smith* holding was intended to apply the criminal negligence standard to § 53a-70 (a) (1). *Id.*, 496. This level of mens rea also applies to § 53a-73 (a) (2) because "they are related statutes designed to address the same type of conduct." *Id.*, 494.

If the force used or threatened to be used in the course of committing sexual assault in the first and third degrees is sufficient to compel the victim to engage in sexual intercourse or to submit to sexual contact, then the lack of consent is implicit. *State v. Jackson*, 30 Conn. App. 281, 288-89, cert. denied, 225 Conn. 916 (1993); *State v. Clinkscales*, 21 Conn. App. 411, 419, cert. denied, 215 Conn. 815 (1990).

If a person initially consents to sexual intercourse, but then withdraws that consent and is compelled to continue, then it is sexual assault in the first degree. *State v. Siering*, 35 Conn. App. 173, 178-85, cert. denied, 231 Conn. 914 (1994) (supplemental instruction on withdrawal of consent was proper statement of law).

"Although it is true that typically in cases in which force has been proven, the evidence demonstrated either violence or some other form of physical coercion, we have consistently held that one also may be guilty of sexual assault in the first degree if one uses one's physical size or

strength to threaten another to submit to sexual intercourse and that such threat may be expressed or implied." (Emphasis in original.) *State v. Mahon*, 97 Conn. App. 503, 512, cert. denied, 280 Conn. 930 (2006); see also *State v. Davis*, 61 Conn. App. 621, 638-39, cert. denied, 255 Conn. 951 (2001) (quoting court's instruction distinguishing between express and implied threats). In *State v. Gagnon*, 18 Conn. App. 694, 699, cert. denied, 213 Conn. 805 (1989), coercion was found when the defendant pretended to be a police officer, causing the victim to stop her vehicle. "Such coercion was intended to and did in fact place the victim in a position wherein she was compelled to submit to sexual contact by the defendant." *Id.*, 699.

It is improper to instruct regarding the "use of force . . . or the threat of use of force" when the defendant is charged only with the "use of force" and no evidence is presented regarding the "threat of the use of force." *State v. Chapman*, 229 Conn. 529, 536-37 (1994).

On the use of force, compare *State v. Hufford*, 205 Conn. 386, 393 (1987) (because victim was physically helpless due to medical condition, it required no force to remove her clothes), and *State v. Mahon*, supra, 97 Conn. App. 511 (removal of the victim's clothing was sufficient evidence of the use of force, due to defendant's show of superior strength).

### ***Intent***

Sexual assault in the first and second degrees, which require sexual intercourse, are general intent crimes. See *State v. Pierson*, 201 Conn. 211, 216 (1986). "[N]o special instructions as to intent are required for a general intent crime unless something in the evidence presented indicates that the defendant acted involuntarily, without sufficient mental capacity, under duress or while entrapped." (Internal quotation marks omitted.) *State v. Jackson*, 30 Conn. App. 281, 291, cert. denied, 225 Conn. 916 (1993).

Sexual assault in the third and fourth degrees are specific intent crimes. "The specific intent for sexual assault in the third degree is derived from General Statutes § 53a-65 (3), which provides in relevant part: 'Sexual contact' means any contact with the intimate parts of a person . . . for the purpose of sexual gratification of the actor. . . ." *State v. Faria*, 254 Conn. 613, 636 n.24 (2000).

"Because not every person who commits sexual assault has intercourse as their ultimate objective, the legislature in the penal code has distinguished between sexual assault with sexual intercourse as its goal and sexual assault with sexual contact as its goal." *State v. Milardo*, 224 Conn. 397, 405 (1993) (sufficient evidence of intent to compel sexual intercourse). "[T]he state had only to prove that the defendant took a substantial step in a course of conduct that was planned to culminate in intentionally compelling another person to engage in sexual intercourse. Thus, the charge on the element of intent necessary for attempted sexual assault in the first degree need not be more specific than instructing, as the trial court did here, that the state must prove that the defendant intended to compel sexual intercourse, regardless of which of the listed acts in the statutory definition might ultimately have been performed had not the defendant's attack on the victim been interrupted." *Id.*, 413.

### ***Lesser included offenses***

Sexual assault in the second degree in violation of § 53a-71 (a) (2) is not a lesser included offense of sexual assault in the first degree because that subsection of second degree sexual assault has an age requirement that first degree sexual assault does not. *State v. Michael A.*, 99 Conn. App. 251, 256-63 (2007).

Sexual assault in the third degree is not a lesser included offense of sexual assault in the first degree, because third degree requires proof of the additional element that the compelled sexual contact was for the purpose of either the sexual gratification of the actor or the humiliation or degradation of the victim. *State v. Milardo*, 224 Conn. 397, 417 (1993); *State v. Mezrioui*, 26 Conn. App. 395, 405-406, cert. denied, 224 Conn. 909 (1992). For the same reason, sexual assault in the fourth degree is not a lesser included offense of sexual assault in the second degree. *State v. Sirimanochanh*, 26 Conn. App. 625, 637 (1992), rev'd on other grounds, 224 Conn. 656 (1993).

### ***Separate offenses***

Two acts of penetration constitute two separate offenses and do not violate double jeopardy protection. The statute punishes "the act of forcible penetration itself, and, therefore, each penetration by the defendant constituted a separate and distinct repetition of the same prohibited act, irrespective of the brief period of time separating them." *State v. Scott*, 270 Conn. 92, 100 (2004), cert. denied, 544 U.S. 987, 127 S.Ct. 1861, 161 L.Ed.2d 746 (2005); see also *State v. Antonio A.*, 90 Conn. App. 286, 295, cert. denied, 275 Conn. 926 (2005), cert. denied, 546 U.S. 1189, 126 S.Ct. 1373, 164 L.Ed.2d 81 (2006) (two acts of digital penetration).

### ***Defenses***

The affirmative defense of fraudulent misrepresentation is not available under the statute prohibiting sexual intercourse between a person who is between the ages of thirteen and fifteen and a person who is at least two years older. *State v. Blake*, 63 Conn. App. 536, 539-42, cert. denied, 257 Conn. 911 (2001) (reviewing statutory history); see also *State v. Plude*, 30 Conn. App. 527, 539-41, cert. denied, 225 Conn. 923 (1993) (mistake of age is no defense).

"[T]he absence of a marital relationship between the defendant and the victim of a sexual assault is *not* an essential element of the crime. Rather, the existence of a marital relationship can be raised *as an exemption or defense* to prosecution for sexual assault in the first degree under § 53a-70 (a). . . . Accordingly, a finding of non-culpability based on the 'marital exemption' of § 53a-65 (2) necessarily depends upon proof of the fact that the victim and the defendant were legally married." (Citation omitted; emphasis in original; internal quotation marks omitted.) *State v. Beaulieu*, 82 Conn. App. 856, 862 (2004), aff'd in part and rev'd in part on other grounds, 274 Conn. 471 (2005).

### ***Confidentiality of the complainant's name and address***

General Statutes § 54-86e provides that the name, address and other identifying information of a victim of sexual assault are confidential. These instructions refer only to "the complainant." The court may use initials or some other identifier when necessary to refer to the complainant.

## 7.1-1 Sexual Assault in the First Degree -- § 53a-70 (a) (1)

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with sexual assault in the first degree. The statute defining this offense reads in pertinent part as follows:

- a person is guilty of sexual assault in the first degree when such person compels another person to engage in sexual intercourse <insert one or both<sup>1</sup> of the following:>
- by the use of force against such other person or a third person, [or]
  - by the threat of the use of force against such other person or against a third person which reasonably causes such person to fear physical injury to such person or a third person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sexual intercourse**

The first element is that the defendant compelled the complainant to engage in sexual intercourse.<sup>2</sup> "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus. Its meaning is limited to persons not married to each other. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration, however, is not required for the commission of cunnilingus. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the other person's body.

"Compelled" has its ordinary meaning. It means that the complainant did not consent and that the defendant must have required the complainant to engage in sexual intercourse against (his/her) will. If you find that the complainant consented to the act of sexual intercourse, you cannot find that the act was compelled. Such consent must have been actual and not simply acquiescence brought about by force, by fear, or by shock. The act must have been truly voluntary. Consent may be express or you may find that it is implied from the circumstances that you find existed. Whether there was consent is a question of fact for you to determine. The defendant has no burden to prove consent. The state must prove compulsion.

The defendant may not be convicted of sexual assault if the words or conduct of the complainant under all the circumstances would justify a reasonable belief that (he/she) had consented. Whether the complainant should be found to have consented depends upon how (his/her) behavior would have been viewed by a reasonable person under the surrounding circumstances. The crux of the inquiry on the issue of consent is not the subjective state of mind of the complainant, but rather, (his/her) manifestations of consent or lack of consent by words or conduct as reasonably construed by a reasonable person in the same circumstances as the defendant.

The state claims that the complainant did not consent, and that the defendant intentionally disregarded the complainant's lack of consent to sexual intercourse and compelled (him/her) to submit to sexual intercourse by force. This imposes a burden upon the state to prove beyond a

reasonable doubt that under the existing circumstances, the defendant failed to perceive a substantial and unjustifiable risk that the complainant had not consented. The failure to perceive a lack of consent, if proven, must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation as it then existed. A gross deviation is a great or substantial deviation, not just a slight or moderate deviation. There must be a great or substantial difference between, on the one hand, the defendant's conduct in failing to perceive a substantial and unjustifiable risk, and, on the other hand, what a reasonable person would have done under the circumstances. Whether the risk is substantial and unjustifiable is a question of fact for you to determine under the circumstances.

### **Element 2 - Use of force or threat of use of force**

The second element is that the sexual intercourse was accomplished by *<insert one or both of the following:>*<sup>3</sup>

- the use of force against the complainant or another party, [or]
- the threat of the use of force against the complainant or another party which reasonably caused the complainant to fear physical injury to (himself/herself ) or another party.

"Use of force" means the use of a dangerous instrument or the use of actual physical force or violence or superior physical strength against another person. *<Include as appropriate:>*

- "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.
- It is not necessary for the state to prove that the defendant was armed with or used any weapon for you to find that the defendant used force. Use of force means that the defendant must have used actual physical force or violence or superior physical strength to compel the other person to submit to sexual intercourse.
- You may find a threat of the use of force because you find that a threat was actually expressed or you may find a threat implied from the circumstances and from what you find to have been the defendant's conduct. Any such threat must have been such that it reasonably caused the complainant to fear physical injury to (herself/himself/another person). "Physical injury" means impairment of physical condition or pain. Whether the fear of physical injury was reasonable is a question of fact for you to determine from the circumstance that you find existed at the time. *<Reference if appropriate evidence concerning, e.g., any injury inflicted, relative sizes, place of occurrence, etc.>*

- In this case, the state has charged that the sexual intercourse was compelled both by the use of force and by the threat of the use of force. These are the two methods by which compulsion may be demonstrated and proved. That element will be established as long as each of you find it proved beyond a reasonable doubt that the intercourse was compelled either by the use of force or the threat of the use of force. Simply put, it is not necessary for the state to prove that the intercourse was compelled both by the use of force and by the threat of the use of force, as long as each one of you is satisfied that it was compelled by force or the threat of the use of force.<sup>4</sup>

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant compelled another person to engage in sexual intercourse, and 2) that this was accomplished by the (the use of force against the other person or against a third person / or the threat of the use of force against the other person or against a third person which reasonably causes such person to fear physical injury to such person or a third person).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> In *State v. Chapman*, 229 Conn. 529, 536-37 (1994), the court held that it was improper to instruct the jury regarding the "use of force . . . or the threat of use of force," when the defendant was charged only with the "use of force" and no evidence had been presented regarding the "threat of the use of force."

<sup>2</sup> It is not necessary that the defendant be the one to have engaged in intercourse with the complainant. *State v. Warren*, 14 Conn. App. 688, 694, cert. denied, 209 Conn. 805 (1988), cert. denied, 488 U.S. 1030, 109 S.Ct. 839, 102 L.Ed.2d 971 (1989).

<sup>3</sup> See footnote 1.

<sup>4</sup> The "use of force" and the "threat of the use of force" are not conceptually distinct methods of compulsion for purposes of giving a unanimity instruction. *State v. Tucker*, 226 Conn. 618, 644-50 (1993).

## **Commentary**

### **Consent**

The Supreme Court held that the applicable mens rea for the element of consent in both § 53a-70 (a) (1) and § 53a-73 (a) (2) is criminal negligence. *Efstathiadis v. Holder*, 317 Conn. 482, 496 (2015); *State v. Smith*, 210 Conn. 132, 141 (1989).

### **Sentence Enhancer**

Section 53a-70 (b) provides an enhanced penalty if the victim is under 16 years of age, and a greater mandatory minimum if the victim is under 10 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## **7.1-2 Sexual Assault in the First Degree -- § 53a-70**

### **(a) (2)**

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with sexual assault in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the first degree when such person engages in sexual intercourse with another person and such other person is under thirteen years of age and the actor is more than two years older than such person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

#### **Element 1 - Sexual intercourse**

The first element is that the defendant engaged in sexual intercourse with the complainant. "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus. Its meaning is limited to persons not married to each other. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration, however, is not required for the commission of cunnilingus. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.

There is no need for the state to prove force or compulsion by the defendant, and it is not a defense that the complainant consented to sexual intercourse. Whether the other person consented to the sexual intercourse is irrelevant to your consideration of this count.

#### **Element 2 - Other person under 13 years of age**

The second element is that the complainant was under thirteen years of age at the time of the sexual intercourse.

#### **Element 3 - Defendant more than 2 years older**

The third element is that the defendant is more than two years older than the complainant.<sup>1</sup>

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) sexual intercourse took place between the defendant and the complainant, and 2) that at the time of the sexual intercourse the complainant had not yet reached the age of thirteen, and 3) the defendant was more than two years older than the complainant.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The statute requires comparison of actual birth dates, not calendar years. *State v. Jason B.*, 248 Conn. 543, 549-55, cert. denied, 528 U.S. 967, 120 S.Ct. 406, 145 L.Ed.2d 316 (1999).

*Commentary*

*Sentence Enhancer*

Section 53a-70 (b) provides an enhanced mandatory minimum if the victim is under 10 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 7.1-3 Sexual Assault in the First Degree -- § 53a-70 (a) (3)

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with sexual assault in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the first degree when such person commits sexual assault in the second degree and in the commission of such offense is aided by two or more other persons actually present.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed sexual assault in the second degree**

The first element is that the defendant committed sexual assault in the second degree. *<Insert the elements from Sexual Assault in the Second Degree, Instruction 7.1-7.>*

### **Element 2 - Aided by two or more other persons**

The second element is that in the commission of sexual assault in the second degree, the defendant was aided by two or more other persons who were actually present at the commission of the offense.<sup>1</sup> This means that two or more other persons must have been present and actively assisting in the assault. Mere presence of inactive companions, or mere acquiescence or some innocent act that in fact aids the perpetrator of the assault does not constitute aid within the meaning of the statute.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for sexual assault in the second degree>*, and that (he/she) was aided by two or more persons who were actually present.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> "Actually present" does not require physical presence in the room or place where the assault occurs. *State v. Jackson*, 75 Conn. App. 578, 585-87 (2003), cert. denied, 291 Conn. 907 (2009).

*Commentary*

*Sentence Enhancer*

Section 53a-70 (b) provides an enhanced mandatory minimum if the victim is under 10 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 7.1-4 Sexual Assault in the First Degree -- § 53a-70 (a) (4)

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with sexual assault in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the first degree when such person engages in sexual intercourse with another person and such other person is mentally incapacitated to the extent that such other person is unable to consent to such sexual intercourse.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sexual intercourse**

The first element is that the defendant engaged in sexual intercourse with the complainant. "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus. Its meaning is limited to persons not married to each other. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration, however, is not required for the commission of cunnilingus. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.

### **Element 2 - With mentally incapacitated person**

The second element is that the complainant was mentally incapacitated at the time of the sexual intercourse to the extent that (he/she) was unable to consent to the sexual intercourse.

"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant engaged in sexual intercourse with the complainant, and 2) at the time of the sexual intercourse the complainant was mentally incapacitated and unable to consent to the intercourse.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

*Commentary*

*Sentence Enhancer*

Section 53a-70 (b) provides an enhanced mandatory minimum if the victim is under 10 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 7.1-5 Aggravated Sexual Assault in the First Degree -- § 53a-70a

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with aggravated sexual assault in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of aggravated sexual assault in the first degree when such person commits sexual assault in the first degree and in the commission of such offense

*<insert appropriate subsection:>*

- **§ 53a-70a (a) (1):** such person (uses / is armed with and threatens the use of / displays or represents by such person's words or conduct that such person possesses) a deadly weapon.
- **§ 53a-70a (a) (2):** with intent to (disfigure the complainant seriously and permanently / to destroy, amputate or disable permanently a member or organ of the complainant's body), (he/she) causes such injury to the complainant.
- **§ 53a-70a (a) (3):** under circumstances evincing an extreme indifference to human life such person recklessly engages in conduct which creates a risk of death to the complainant, and thereby causes serious physical injury to the complainant.
- **§ 53a-70a (a) (4):** such person is aided by two or more other persons actually present.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed sexual assault in the first degree**

The first element is that the defendant committed sexual assault in the first degree. *<Insert the elements from the instruction for the alleged underlying crime:>*

- **§ 53a-71 (a) (1):** Sexual Assault in the First Degree, Instruction 7.1-1.
- **§ 53a-71 (a) (2):** Sexual Assault in the First Degree, Instruction 7.1-2.
- **§ 53a-71 (a) (3):** Sexual Assault in the First Degree, Instruction 7.1-3.
- **§ 53a-71 (a) (4):** Sexual Assault in the First Degree, Instruction 7.1-4.

### **Element 2 - Aggravating factor**

The second element is that in the commission of the sexual assault *<insert as appropriate:>*

- **§ 53a-70a (a) (1):** the defendant, in carrying out the sexual assault, (used a deadly weapon / had a deadly weapon in (his/her) possession and threatened to use it / displayed or represented by (his/her) words or conduct that (he/she) possessed a deadly weapon). "Deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles. The state alleges that the defendant *<insert allegations concerning the weapon>*.

*[<Insert if appropriate:>* "Displayed" means that the *<insert type of weapon>* was shown to or was visible to the complainant. "Represented by words or conduct" means that the defendant did or said something to indicate to the complainant that (he/she) had a *<insert type of weapon>* in (his/her) possession. It is not necessary for the state to prove

that the defendant actually had a *<insert type of weapon>*, only that it was represented to be a *<insert type of weapon>* by what the defendant said or did.]

- **§ 53a-70a (a) (2):** the defendant, with the intent to disfigure the complainant seriously and permanently, or to destroy, amputate or disable permanently a member or organ of the complainant's body, caused such injury to the complainant. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*
- **§ 53a-70a (a) (3):** the defendant, under circumstances evincing an extreme indifference to human life, recklessly engaged in conduct that created a risk of death to the complainant, and thereby caused the complainant serious physical injury. "Indifference" means simply not caring. It means lacking any interest in a matter one way or the other. Extreme means existing in the highest or greatest possible degree. Extreme indifference is more than ordinary indifference. It is synonymous with excessive and is the greatest departure from the ordinary. What evinces an extreme indifference to human life is a question of fact. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<See Recklessness, Instruction 2.3-4.>* "Serious physical injury" means physical injury that creates a substantial risk of death, or that causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ.
- **§ 53a-70a (a) (4):** the defendant was aided by two or more other persons actually present.<sup>1</sup> This means that two or more other persons must have been present and actively assisting in the assault. Mere presence of inactive companions, or mere acquiescence or some innocent act that in fact aids the perpetrator of the assault does not constitute aid within the meaning of the statute.

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for the underlying crime>*, and that *<insert aggravating factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of aggravated sexual assault in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> "Actually present" does not require physical presence in the room or place where the assault occurs. *State v. Jackson*, 75 Conn. App. 578, 585-87 (2003).

## **Commentary**

### **Sentence Enhancer**

Section 53a-70a (b) provides an enhanced penalty if the victim is under 16 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 7.1-6 Sexual Assault in Spousal or Cohabiting Relationship -- § 53a-70b

Revised to April 23, 2010

The defendant is charged [in count \_\_\_] with sexual assault in a spousal or cohabiting relationship. The statute defining this offense reads in pertinent part as follows:

no spouse or cohabitor shall compel the other spouse or cohabitor to engage in sexual intercourse by *<insert one or both<sup>1</sup> of the following:>*

- the use of force against such other spouse or cohabitor, [or]
- the threat of the use of force against such other spouse or cohabitor which reasonably causes such other spouse or cohabitor to fear physical injury.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Sexual intercourse

The first element is that the defendant compelled the complainant to engage in sexual intercourse. "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse, or fellatio and does not require emission of semen. Penetration, however, is not required for the commission of cunnilingus. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.<sup>2</sup>

### Element 2 - Use of force or threat of use of force

The second element is that the sexual intercourse was accomplished by *<insert one or both of the following:>*<sup>3</sup>

- the use of force against the complainant, [or]
- the threat of the use of force against the complainant which reasonably caused the complainant to fear physical injury to (himself / herself).

"Use of force" means the use of a dangerous instrument or the use of actual physical force or violence or superior physical strength against the complainant. *<Include as appropriate:>*

- "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in

fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

- It is not necessary for the state to prove that the defendant was armed with or used any weapon for you to find that the defendant used force. Use of force means that the defendant must have used actual physical force or violence or superior physical strength to compel the complainant to submit to sexual intercourse.
- You may find a threat of the use of force because you find that a threat was actually expressed or you may find a threat implied from the circumstances and from what you find to have been the defendant's conduct. Any such threat must have been such that it reasonably caused the complainant to fear physical injury to (herself/himself). "Physical injury" means impairment of physical condition or pain. Whether the fear of physical injury was reasonable is a question of fact for you to determine from the circumstance that you find existed at the time. *<Reference if appropriate evidence concerning, e.g., any injury inflicted, relative sizes, place of occurrence, etc.>*
- In this case, the state has charged that the sexual intercourse was compelled both by the use of force and by the threat of the use of force. These are the two methods by which compulsion may be demonstrated and proved. That element will be established as long as each of you finds it proved beyond a reasonable doubt that the intercourse was compelled either by the use of force or the threat of the use of force. Simply put, it is not necessary for the state to prove that the intercourse was compelled both by the use of force and by the threat of the use of force, as long as each one of you is satisfied that it was compelled by force or the threat of the use of force.<sup>4</sup>

### **Element 3 - Spousal or cohabiting relationship**

The third element is that the complainant was the (spouse / cohabitor) of the defendant. *<Insert appropriate definition:>*

- "Spouse" means a husband or wife.
- "Cohabitor" is any person actually living with another person, both of whom have mutually assumed the rights, duties and obligations that are usually manifested by married people, including but not necessarily dependent on sexual relations.<sup>5</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant compelled the complainant to engage in sexual intercourse, 2) (he/she) did so through the (use / threatened use) of force, and 3) the defendant and the complainant were at the time (in a spousal relationship / cohabiting).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in a (spousal / cohabiting) relationship, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> In *State v. Chapman*, 229 Conn. 529, 536-37 (1994), the court held that it was improper to instruct regarding the "use of force . . . or the threat of the use of force," when the defendant was

charged only with "use of force" and no evidence had been presented regarding "threat of use of force."

<sup>2</sup> The definition of "sexual intercourse" in General Statutes § 53a-70b (a) is identical to the definition in § 53a-65 (2), except that it does not limit it to persons who are not married to one another.

<sup>3</sup> See footnote 1.

<sup>4</sup> The "use of force" and the "threat of the use of force" are not conceptually distinct methods of compulsion for purposes of giving a unanimity instruction. *State v. Tucker*, 226 Conn. 618, 644-50 (1993).

<sup>5</sup> This definition of cohabitor is intended to include the parties to a civil union. See *State v. Arroyo*, 181 Conn. 426, 432-33 (1980); *State v. Cayotte*, 25 Conn. App. 384, 391 (1991).

### ***Commentary***

It is not improper to instruct the defendant under both § 53a-70 and § 53a-70b when there is a factual issue as to whether the defendant and the victim were cohabiting. *State v. Suggs*, 209 Conn. 733, 741-50 (1989).

General Statutes § 54-86e, which protects the identity of a victim of a sexual assault, does not apply to this offense.

## 7.1-7 Sexual Assault in the Second Degree -- § 53a-71

Revised to November 6, 2014

**Note:** This instruction is for crimes committed on or after October 1, 2013. Public Act No. 13-47, § 3, changed the term "mentally defective" to "impaired because of mental disability or disease" and modified the definition of "physically helpless."

For the instruction for crimes committed before October 1, 2013 but after October 1, 2007, see Instruction 7.1-7B in the Archive.

For the instruction for crimes committed before October 1, 2007, see Instruction 7.1-7A in the Archive.

The defendant is charged [in count \_\_\_] with sexual assault in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and *<insert appropriate subsection>*

- § 53a-71 (a) (1): such other person is thirteen years of age or older but under sixteen years of age and the actor is more than three years older than such person.
- § 53a-71 (a) (2): such other person is impaired because of mental disability or disease to the extent that such person is unable to consent to such sexual intercourse.
- § 53a-71 (a) (3): such other person is physically helpless.
- § 53a-71 (a) (4): such other person is less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare.
- § 53a-71 (a) (5): such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such person.
- § 53a-71 (a) (6): the actor is a psychotherapist and such other person is (a patient of the actor and the sexual intercourse occurs during the psychotherapy session / a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor / a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception).
- § 53a-71 (a) (7): the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional.
- § 53a-71 (a) (8): the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor.
- § 53a-71 (a) (9): the actor is a coach in an athletic activity or a person who provides intensive, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and is (a secondary school student and receives such coaching or instruction in a secondary school setting / under eighteen years of age).
- § 53a-71 (a) (10): the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and such other person is under eighteen years of age.

- **§ 53a-71 (a) (11):** such other person is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.<sup>1</sup>

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

**Element 1 - Sexual intercourse**

The first element is that the defendant and the complainant engaged in sexual intercourse. "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Its meaning is limited to persons not married to each other. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse, or fellatio and does not require emission of semen. Penetration, however, is not required for the commission of cunnilingus. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.

**Element 2 - Additional factor**

The second element is that, at the time of the offense, *<insert as appropriate and tailor to the facts of the case:>*

- **§ 53a-71 (a) (1):** the complainant was thirteen years of age or older but under sixteen years of age and the defendant was more than three years older than the complainant at the time this offense was committed.
- **§ 53a-71 (a) (2):** the complainant was impaired because of mental disability or disease to the extent that (he/she) was unable to consent to such sexual intercourse. "Impaired because of mental disability or disease" means that a person suffers from a mental disability or disease which renders such person incapable of appraising the nature of such person's conduct. The person's condition must not have been a temporary condition, but a standing disability or disease of the mind. It is sufficient if the condition made (him/her) unable to understand the defendant's conduct.
- **§ 53a-71 (a) (3):** the complainant was physically helpless. "Physically helpless" means that the person is either unconscious, or is for any other reason physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact. That is, the complainant was unable by reason of (his/her) physical condition to do anything and was, therefore, incapable of consenting. The helplessness referred to is separate and apart from any mental condition.
- **§ 53a-71 (a) (4):** the complainant was less than eighteen years old, and the defendant was (the complainant's guardian / responsible for the general supervision of the complainant's welfare).
- **§ 53a-71 (a) (5):** the complainant was in custody of law or detained in a hospital or other institution and the defendant had supervisory or disciplinary authority over (him/her).
- **§ 53a-71 (a) (6):** the defendant was a psychotherapist and the complainant was *<insert as appropriate:>*
  - a patient of the defendant and the sexual intercourse occurred during the psychotherapy session.

- a patient or former patient of the defendant and (he/she) was emotionally dependent upon the defendant.
- a patient or former patient of the defendant and the sexual intercourse occurred by means of therapeutic deception.

*<Include appropriate definitions:>*

- "Psychotherapist" means a physician, psychologist, nurse, substance abuse counselor, social worker, clergyman, marital and family therapist, mental health service provider, hypnotist or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.
- "Psychotherapy" means the professional treatment, assessment or counseling of a mental or emotional illness, symptom or condition.
- "Emotionally dependent" means that the nature of the patient or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the patient or former patient is unable to withhold consent to sexual intercourse with the psychotherapist.
- "Therapeutic deception" means a representation by a psychotherapist that sexual intercourse with the psychotherapist is consistent with or part of the patient's treatment.
- **§ 53a-71 (a) (7):** the defendant accomplished the sexual intercourse by means of a false representation that the sexual intercourse was for a bona fide medical purpose by a health care professional.
- **§ 53a-71 (a) (8):** the defendant was a school employee and the complainant was a student enrolled in a school in which the defendant worked or a school under the jurisdiction of the local or regional board of education which employed the defendant. "School employee" means either a teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or a private elementary, middle or high school or working in a public or private elementary, middle or high school; or any other person who, in the performance of his or her duties, has regular contact with students and who provides services to or on behalf of students enrolled in a public elementary, middle or high school, pursuant to a contract with the local or regional board of education or in a private elementary, middle or high school pursuant to a contract with the supervisory agent of the private school.
- **§ 53a-71 (a) (9):** the defendant (was a coach in an athletic activity / provided intensive, ongoing instruction) and the complainant was a recipient of the (coaching / instruction) from the defendant, and the complainant was (a secondary school student and received the (coaching / instruction) in a secondary school setting / under eighteen years of age).
- **§ 53a-71 (a) (10):** the defendant was twenty years of age or older and stood in a position of power, authority or supervision over the complainant by virtue of the defendant's professional, legal, occupational or volunteer status and the complainant's participation in a program or activity, and the complainant was under eighteen years of age.
- **§ 53a-71 (a) (11):** the complainant is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the defendant has supervisory or disciplinary authority over (him/her).

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) sexual intercourse took place between the defendant and the complainant and 2) *<insert additional factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> This alternative was added by Public Acts 2011, No. 11-113, § 1, effective October 1, 2011.

***Commentary******Sentence Enhancer***

Section 53a-71 (b) provides an enhanced penalty if the victim is under 16 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 7.1-8 Sexual Assault in the Third Degree -- § 53a-72a (a) (1)

Revised to April 23, 2010

The defendant is charged [in count \_\_\_] with sexual assault in the third degree. The statute defining this offense reads in pertinent part as follows:

- a person is guilty of sexual assault in the third degree when such person compels another person to submit to sexual contact by *<insert one or both<sup>1</sup> of the following:>*
- the use of force against such other person or a third person, [or]
  - the threat of the use of force against such other person or against a third person which reasonably causes such other person to fear physical injury to himself or herself or a third person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sexual contact**

The first element is that there was sexual contact between the defendant and the complainant. "Sexual contact" means any contact by the defendant with the intimate parts of the complainant or contact of the intimate parts of the defendant with the complainant. "Intimate parts" means the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts. To constitute sexual contact there must be an actual touching. There need not be, however, direct contact with the unclothed body of the other person or the defendant. It is enough if the touching of the genital area, groin, anus, inner thighs, buttocks or breast was through the other person's clothing or the defendant's clothing.

### **Element 2 - Intent**

The second element is that defendant had the specific intent to (obtain sexual gratification / degrade or humiliate the complainant).<sup>2</sup> A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Element 3 - Use of force or threat of use of force**

The third element is that the defendant compelled the complainant to submit to the sexual contact by *<insert one or both of the following:>*<sup>3</sup>

- the use of force against the complainant or another party, [or]
- the threat of the use of force against the complainant or another party which reasonably caused the complainant to fear physical injury to (himself/herself) or another party.

"Use of force" means the use of a dangerous instrument or the use of actual physical force or violence or superior physical strength against another person. *<Include as appropriate:>*

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

which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

- It is not necessary for the state to prove that the defendant was armed with or used any weapon for you to find that the defendant used force. Use of force means that the defendant must have used actual physical force or violence or superior physical strength to compel the other person to submit to sexual contact.
- You may find a threat of the use of force because you find that a threat was actually expressed or you may find a threat implied from the circumstances and from what you find to have been the defendant's conduct. Any such threat must have been such that it reasonably caused the complainant to fear physical injury to (herself/himself/another person). "Physical injury" means impairment of physical condition or pain. Whether the fear of physical injury was reasonable is a question of fact for you to determine from the circumstance that you find existed at the time. *<Reference if appropriate evidence concerning, e.g., any injury inflicted, relative sizes, place of occurrence, etc.>*
- In this case, the state has charged that the sexual contact was compelled by both the use of force and by the threat of the use of force. These are the two methods by which compulsion may be demonstrated and proved. That element will be established as long as each of you finds it proved beyond a reasonable doubt that the contact was compelled either by the use of force or the threat of the use of force. Simply put, it is not necessary for the state to prove that the contact was compelled both by the use of force and by the threat of the use of force, as long as each one of you is satisfied that it was compelled by force or the threat of the use of force.<sup>4</sup>

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) sexual contact took place between the defendant and the complainant, 2) the defendant specifically intended to (obtain sexual gratification / degrade or humiliate the complainant), and 3) the defendant (used /threatened to use) force.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> In *State v. Chapman*, 229 Conn. 529, 536-37 (1994), the court held that it was improper to instruct regarding the "use of force . . . or the threat of the use of force," when the defendant was

charged only with the "use of force" and no evidence had been presented regarding the "threat of the use of force."

<sup>2</sup> The intent element of this offense is derived from the definition of "sexual contact" in General Statutes § 53a-65 (3). See *State v. Faria*, 254 Conn. 613, 636 n.24 (2000).

<sup>3</sup> See footnote 1.

<sup>4</sup> The "use of force" and the "threat of the use of force" are not conceptually distinct methods of compulsion for purposes of giving a unanimity instruction. *State v. Tucker*, 226 Conn. 618, 644-50 (1993).

### *Commentary*

#### *Sentence Enhancer*

Section 53a-82a (b) provides an enhanced penalty if the victim is under 16 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 7.1-9 Sexual Assault in the Third Degree -- § 53a-72a (a) (2)

Revised to December 1, 2007 (modified November 1, 2008)

The defendant is charged [in count \_\_\_] with sexual assault in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the third degree when such person engages in sexual intercourse with another person whom the actor knows to be related to him or her within any of the degrees of kindred specified in the statute that specifies which relatives are prohibited from marrying one another.<sup>1</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sexual intercourse**

The first element is that the defendant and the complainant engaged in sexual intercourse. "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Its meaning is limited to persons not married to each other. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse, or fellatio and does not require emission of semen. Penetration, however, is not required for the commission of cunnilingus. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.

### **Element 2 - Knowledge of kindred**

The second element is that the defendant knew that the complainant was related to (him/her) as a (mother / grandmother / daughter / granddaughter / sister / aunt / niece / stepmother / stepdaughter / father / grandfather / son / grandson / brother / uncle / nephew / stepfather / stepson). A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See *Knowledge, Instruction 2.3-3.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant and the complainant engaged in sexual intercourse, and 2) the defendant knew that they were related as <define relationship>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 46b-21 reads as follows: "Kindred who may not marry. No man may marry his mother, grandmother, daughter, granddaughter, sister, aunt, niece, stepmother or

stepdaughter, and no woman may marry her father, grandfather, son, grandson, brother, uncle, nephew, stepfather or stepson. Any marriage within these degrees is void." Section 53a-72a (a) (2) encompasses conduct occurring between persons related by adoption as well as by blood. *State v. George B.*, 258 Conn. 779, 794-96 (2001).

#### ***Commentary***

In *State v. John F.M.*, 285 Conn. 528, 549 (2008), the Supreme Court interpreted this statute to apply "equally to both same sex and opposite sex sexual intercourse between individuals who are related within the degrees of kinship specified in § 46b-21." The Court also discusses the evidentiary requirements of proving kinship. *Id.*, 534-44. On remand, the trial court properly instructed the jury that it could find that the defendant was the stepparent of the victim through testimonial admissions. *State v. John F.M.*, 110 Conn. App. 181, 186-87, cert. denied, 289 Conn. 948 (2008).

#### ***Sentence Enhancer***

Section 53a-82a (b) provides an enhanced penalty if the victim is under 16 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 7.1-10 Sexual Assault in the Third Degree with a Firearm -- § 53a-72b

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with sexual assault in the third degree with a firearm.

The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the third degree with a firearm when such person commits sexual assault in the third degree and in the commission of such offense, such person (uses / is armed with and threatens the use of / displays or represents by such person's words or conduct that such person possesses) a pistol, revolver, machine gun, rifle, shotgun or other firearm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Committed sexual assault in the third degree

The first element is that the defendant committed sexual assault in the third degree. *<Insert the elements from the instruction for the alleged underlying crime:>*

- § 53a-72a (a) (1): Sexual Assault in the Third Degree, Instruction 7.1-8.
- § 53a-72a (a) (2): Sexual Assault in the Third Degree, Instruction 7.1-9.

### Element 2 - With a firearm

The second element is that the defendant *<insert as appropriate:>*

- used a firearm;
- was armed with, and threatened the use of a firearm;
- displayed or represented by words or conduct that (he/she) possessed a firearm. [*<If appropriate:>* It is not required that what the defendant represents to be a firearm be loaded or that the defendant actually have a firearm. It need only be represented by words or conduct that (he/she) is so armed.]

*<Describe specific allegations regarding firearm.>* The term "firearm" includes any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>1</sup>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for the underlying crime>*, and that the defendant (used / was armed with and threatened the use of / displayed or represented that (he/she) possessed) a firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the third degree with a firearm, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See definitions for machine gun, rifle, shotgun, pistol or revolver in the glossary.

***Commentary***

"No person shall be convicted of sexual assault in the third degree and sexual assault in the third degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information." General Statutes § 53a-72b (a).

***Sentence Enhancer***

Section 53a-72b (b) provides an enhanced penalty if the victim is under 16 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 7.1-11 Sexual Assault in the Fourth Degree -- § 53a-73a (a) (1) and (a) (3) through (9)

Revised to November 17, 2015

**Note:** This instruction is for crimes committed on or after October 1, 2013. Public Act No. 13-47, § 3, changed the term "mentally defective" to "impaired because of mental disability or disease" and modified the definition of "physically helpless."

For the instruction for crimes committed before October 1, 2013 but after October 1, 2007, see Instruction 7.1-11B in the Archive.

For the instruction for crimes committed before October 1, 2007, see Instruction 7.1-11A in the Archive.

The defendant is charged [in count \_\_\_] with sexual assault in the fourth degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the fourth degree when such person subjects another person to sexual contact and <insert appropriate subsection:>

- § 53a-73a (a) (1) (A): such other person is under thirteen years of age and the defendant is more than two years older.
- § 53a-73a (a) (1) (B): such other person is thirteen years of age or older but under fifteen years of age and the actor is more than three years older than such other person.
- § 53a-73a (a) (1) (C): such other person is mentally incapacitated or impaired because of mental disability or disease to the extent that such person is unable to consent to such sexual contact.
- § 53a-73a (a) (1) (D): such other person is physically helpless.
- § 53a-73a (a) (1) (E): such other person is less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare.
- § 53a-73a (a) (1) (F): such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such person.
- § 53a-73a (a) (3): the sexual contact was with an animal or dead body.
- § 53a-73a (a) (4): the defendant was a psychotherapist and the complainant was (a patient of the defendant and the sexual contact occurred during the psychotherapy session / a patient or former patient of the defendant and (he/she) was emotionally dependent upon the defendant / a patient or former patient of the defendant and the sexual contact occurred by means of therapeutic deception).
- § 53a-73a (a) (5): the defendant accomplished the sexual contact by means of a false representation that the sexual intercourse was for a bona fide medical purpose by a health care professional.
- § 53a-73a (a) (6): the defendant was a school employee and the complainant was a student enrolled in a school in which the defendant worked or a school under the jurisdiction of the local or regional board of education which employed the defendant.
- § 53a-73a (a) (7): the defendant (was a coach in an athletic activity / provided intensive, ongoing instruction) and the complainant was a recipient of the (coaching / instruction) from the defendant, and the complainant was (a secondary school student and

received the (coaching / instruction) in a secondary school setting / under eighteen years of age).

- **§ 53a-73a (a) (8):** the defendant was twenty years of age or older and stood in a position of power, authority or supervision over the complainant by virtue of the defendant's professional, legal, occupational or volunteer status and the complainant's participation in a program or activity, and the complainant was under eighteen years of age.
- **§ 53a-73a (a) (9):** the complainant was placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the defendant had supervisory or disciplinary authority over such other person.<sup>1</sup>

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### **Element 1 - Sexual contact**

The first element is that the defendant subjected the complainant to sexual contact. "Sexual contact" means any contact by the defendant with the intimate parts of the complainant or contact of the intimate parts of the defendant with the complainant. "Intimate parts" means the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts. To constitute sexual contact there must be an actual touching. There need not be, however, direct contact with the unclothed body of the other person or the defendant. It is enough if the touching of the genital area, groin, anus, inner thighs, buttocks or breast was through the other person's clothing or the defendant's clothing.

### **Element 2 - Intent**

The second element is that defendant had the specific intent to (obtain sexual gratification / degrade or humiliate the complainant).<sup>2</sup> A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 3 - Additional factor**

The third element is that, at the time of the offense, <insert as appropriate and tailor to the facts of the case:>

- **§ 53a-73a (a) (1) (A):** the complainant was under thirteen years of age and the defendant was more than two years older.
- **§ 53a-73a (a) (1) (B):** the complainant was thirteen years of age or older but under fifteen years of age and the defendant was more than three years older.
- **§ 53a-73a (a) (1) (C):** the complainant was mentally incapacitated or impaired because of mental disability or disease to the extent that (he/she) was unable to consent to such sexual intercourse. "Impaired because of mental disability or disease" means that a person suffers from a mental disability or disease which renders such person incapable of appraising the nature of such person's conduct. The person's condition must not have been a temporary condition, but a standing disability or disease of the mind. It is sufficient if the condition made (him/her) unable to understand the defendant's conduct. "Mentally incapacitated" means that a person is rendered temporarily incapable of

appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent.

- **§ 53a-73a (a) (1) (D):** the complainant was physically helpless. "Physically helpless" means that a person is either unconscious, or is for any other reason physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact. That is, the complainant was unable by reason of (his/her) physical condition to do anything and was, therefore, incapable of consenting. The helplessness referred to is separate and apart from any mental condition.
- **§ 53a-73a (a) (1) (E):** the complainant was less than eighteen years old at the time this offense was committed, and the defendant was (the complainant's guardian / responsible for the general supervision of the complainant's welfare).
- **§ 53a-73a (a) (1) (F):** the complainant was in custody of law or detained in a hospital or other institution and the defendant had supervisory or disciplinary authority over (him/her).
- **§ 53a-73a (a) (3):** the sexual contact was with an animal or dead body.
- **§ 53a-73a (a) (4):** the defendant was a psychotherapist and the complainant was (a patient of the defendant and the sexual contact occurred during the psychotherapy session / a patient or former patient of the defendant and (he/she) was emotionally dependent upon the defendant / a patient or former patient of the defendant and the sexual contact occurred by means of therapeutic deception).

*<Include appropriate definitions:>*

- "Psychotherapist" means a physician, psychologist, nurse, substance abuse counselor, social worker, clergyman, marital and family therapist, mental health service provider, hypnotist or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.
- "Psychotherapy" means the professional treatment, assessment or counseling of a mental or emotional illness, symptom or condition.
- "Emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the patient or former patient is unable to withhold consent to sexual contact by the psychotherapist.
- "Therapeutic deception" means a representation by a psychotherapist that sexual contact by the psychotherapist is consistent with or part of the patient's treatment.
- **§ 53a-73a (a) (5):** the defendant accomplished the sexual contact by means of a false representation that the sexual intercourse was for a bona fide medical purpose by a health care professional.
- **§ 53a-73a (a) (6):** the defendant was a school employee and the complainant was a student enrolled in a school in which the defendant worked or a school under the jurisdiction of the local or regional board of education which employed the defendant. "School employee" means either a teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or a private elementary, middle or high school or working in a public or private elementary, middle or high school; or any other person who, in the performance of his or her duties,

has regular contact with students and who provides services to or on behalf of students enrolled in a public elementary, middle or high school, pursuant to a contract with the local or regional board of education or in a private elementary, middle or high school pursuant to a contract with the supervisory agent of the private school.

- **§ 53a-73a (a) (7):** the defendant (was a coach in an athletic activity / provided intensive, ongoing instruction) and the complainant was a recipient of the (coaching / instruction) from the defendant, and the complainant was (a secondary school student and received the (coaching / instruction) in a secondary school setting / under eighteen years of age).
- **§ 53a-73a (a) (8):** the defendant was twenty years of age or older and stood in a position of power, authority or supervision over the complainant by virtue of the defendant's professional, legal, occupational or volunteer status and the complainant's participation in a program or activity, and the complainant was under eighteen years of age.
- **§ 53a-73a (a) (9):** the complainant was placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the defendant had supervisory or disciplinary authority over such other person.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant subjected the complainant to sexual contact, 2) (he/she) specifically intended to (obtain sexual gratification / degrade or humiliate the complainant), and 3) *<insert additional factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the fourth degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> This alternative was added by Public Acts 2011, No. 11-113, § 2, effective October 1, 2011.

<sup>2</sup> The intent element of this offense is derived from the definition of "sexual contact" in General Statutes § 53a-65 (3). See *State v. Faria*, 254 Conn. 613, 636 n.24 (2000).

### ***Commentary***

#### ***Sentence Enhancer***

Section 53a-73a (b) provides an enhanced penalty if the victim is under 16 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 7.1-12 Sexual Assault in the Fourth Degree -- § 53a-73a (a) (2)

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with sexual assault in the fourth degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the fourth degree when such person subjects another person to sexual contact without such other person's consent.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### **Element 1 - Sexual contact**

The first element is that the defendant subjected the complainant to sexual contact. "Sexual contact" means any contact by the defendant with the intimate parts of the complainant or contact of the intimate parts of the defendant with the complainant for the purpose of the defendant's sexual gratification or for the purpose of degrading or humiliating the complainant. "Intimate parts" means the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts. To constitute sexual contact there must be an actual touching. There need not be, however, direct contact with the unclothed body of the other person or the defendant. It is enough if the touching of the genital area, groin, anus, inner thighs, buttocks or breast was through the other person's clothing or the defendant's clothing.

### **Element 2 - Intent**

The second element is that the defendant had the specific intent to (obtain sexual gratification / degrade or humiliate the complainant).<sup>1</sup> A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 3 - Lack of consent**

The third element is that, at the time of the offense, the complainant did not consent to the sexual contact. Such consent must have been actual and not simply acquiescence brought about by force, by fear, or by shock. It must have been truly voluntary. Consent may be express or you may find that it is implied from the circumstances that you find existed. Whether there was consent is a question of fact for you to determine. The defendant has no burden to prove consent. The state must prove the lack of consent. The defendant may not be convicted of sexual assault if the words or conduct of the complainant under all the circumstances would justify a reasonable belief that (he/she) had consented. Whether the complainant should be found to have consented depends upon how (his/her) behavior would have been viewed by a reasonable person under the surrounding circumstances. The crux of the inquiry on the issue of consent is not the subjective state of mind of the complainant, but rather, (his/ her) manifestations of consent or lack of consent by words or conduct as reasonably construed by a reasonable person in the same circumstances as the defendant.

The state claims that the complainant did not consent, and that the defendant intentionally disregarded the complainant's lack of consent to sexual contact. This imposes a burden upon the state to prove beyond a reasonable doubt that under the existing circumstances, the defendant failed to perceive a substantial and unjustifiable risk that the complainant had not consented. The failure to perceive a lack of consent, if proven, must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation as it then existed. A gross deviation is a great or substantial deviation, not just a slight or moderate deviation. There must be a great or substantial difference between, on the one hand, the defendant's conduct in failing to perceive a substantial and unjustifiable risk, and, on the other hand, what a reasonable person would have done under the circumstances. Whether the risk is substantial and unjustifiable is a question of fact for you to determine under the circumstances.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant subjected the complainant to sexual contact, 2) (he/she) specifically intended to (obtain sexual gratification / degrade or humiliate the complainant), and 3) the complainant did not consent to the sexual contact.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the fourth degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The intent element of this offense is derived from the definition of "sexual contact" in General Statutes § 53a-65 (3). See *State v. Faria*, 254 Conn. 613, 636 n.24 (2000).

### ***Commentary***

#### ***Consent***

The Supreme Court held that the applicable mens rea for the element of consent in both § 53a-70 (a) (1) and § 53a-73 (a) (2) is criminal negligence. *Efstathiadis v. Holder*, 317 Conn. 482, 496 (2015); *State v. Smith*, 210 Conn. 132, 141 (1989).

#### ***Sentence Enhancer***

Section 53a-73a (b) provides an enhanced penalty if the victim is under 16 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 7.1-13 Affirmative Defense to Sexual Assault -- § 53a-67

Revised to November 6, 2014

**Note:** This instruction is for crimes committed on or after October 1, 2013. Public Act No. 13-47, § 3, changed the term "mentally defective" to "impaired because of mental disability or disease" and modified the definition of "physically helpless." For the instruction for crimes committed before October 1, 2013, see Instruction 7.1-13A in the Archive.

The state has the burden of proving beyond a reasonable doubt that the defendant committed each of the elements of the crime of *<insert specific offense>* as I have defined them for you. If you are satisfied that the state has proved these elements beyond a reasonable doubt, you must still consider whether the defendant has proved (his/her) affirmative defense.

*<Insert Affirmative Defense, Instruction 2.9-1.>*

### A. Affirmative defense under § 53a-67 (a):

The statute defining this defense provides as follows:

in any prosecution for *<insert specific offense>* based on the complainant's being impaired because of mental disability or disease, mentally incapacitated or physically helpless, it shall be an affirmative defense that the defendant at the time (he/she) engaged in the conduct constituting the offense, did not know of such condition of the complainant.

### Conclusion

*<Substitute for the concluding paragraph in the offense instruction.>* If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of *<insert specific offense>*, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved by a preponderance of the evidence that (he/she) did not know at the time of the offense that the complainant was (impaired because of mental disability or disease / mentally incapacitated / physically helpless), then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

### B. Affirmative defense under § 53a-67 (b):

**Note:** This defense does not apply to §§ 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b. It thus applies only to fourth degree sexual assault (§ 53a-73a).

The statute defining this defense provides as follows:

in any prosecution for *<insert specific offense>* it shall be an affirmative defense that the defendant and the complainant were, at the time of the alleged offense, living

together by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship.

The defendant claims that (he/she) and the complainant were, at the time of the alleged offense, living together by mutual consent in the relationship of cohabitation. "Cohabitation" means actually living together by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship. Simply living together is not sufficient. The relationship of cohabitation includes all of the many facets of married life in addition to sexual relations. There must be a mutual assumption of the marital rights, duties, and obligations that are usually manifested by married people.<sup>1</sup>

### **Conclusion**

<Substitute for the concluding paragraph in the offense instruction.> If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of <insert specific offense>, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved by a preponderance of the evidence that the defendant and the complainant were living together by mutual consent in a relationship of cohabitation, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

---

<sup>1</sup> This definition of cohabitation is intended to include a civil union. See *State v. Arroyo*, 181 Conn. 426, 432-33 (1980); *State v. Cayotte*, 25 Conn. App. 384, 391 (1991).

## 7.1-14 Aggravated Sexual Assault of a Minor -- § 53a-70c

New, June 13, 2008

The defendant is charged [in count \_\_\_] with aggravated sexual assault of a minor. The statute defining this offense reads in pertinent part as follows:

A person is guilty of aggravated sexual assault of a minor when such person commits  
<insert underlying crime:>

- § 53-21 (a) (2): risk of injury to a minor involving sexual contact,
  - § 53a-70: sexual assault in the first degree,
  - § 53a-70a: aggravated sexual assault in the first degree,
  - § 53a-71: sexual assault in the second degree,
  - § 53a-86: promoting prostitution in the first degree,
  - § 53a-87: promoting prostitution in the second degree,
  - § 53a-196a: employing a minor in an obscene performance,
- and the object of that offense is under thirteen years of age, and <insert appropriate subsection:>
- § 53a-70c (a) (1): such person kidnapped or illegally restrained the other person.
  - § 53a-70c (a) (2): such person stalked the other person.
  - § 53a-70c (a) (3): such person used violence to commit such offense against the other person.
  - § 53a-70c (a) (4): such person caused serious physical injury to or disfigurement of the other person.
  - § 53a-70c (a) (5): there was more than one object of such offense under thirteen years of age.
  - § 53a-70c (a) (6): such person was not known to the other person.
  - § 53a-70c (a) (7): such person has previously been convicted of a violent sexual assault.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Underlying crime

The first element is that the defendant committed <insert underlying crime>. <Insert the elements from the instruction for the alleged underlying crime:>

- § 53-21 (a) (2): Risk of Injury to a Minor (Sexual Contract), Instruction 6.11-3.
- § 53a-71 (a) (1): Sexual Assault in the First Degree, Instruction 7.1-1.
- § 53a-71 (a) (2): Sexual Assault in the First Degree, Instruction 7.1-2.
- § 53a-71 (a) (3): Sexual Assault in the First Degree, Instruction 7.1-3.
- § 53a-71 (a) (4): Sexual Assault in the First Degree, Instruction 7.1-4.
- § 53a-70a: Aggravated Sexual Assault in the First Degree, Instruction 7.1-5
- § 53a-71: Sexual Assault in the Second Degree, Instruction 7.1-7.
- § 53a-86 (a) (1): Promoting Prostitution in the First Degree, Instruction 7.3-4.
- § 53a-86 (a) (2) and § 53a-87 (a) (2): Promoting Prostitution in the First or Second Degree (By a Minor), Instruction 7.3-5.

- § 53a-87 (a) (1): Promoting Prostitution in the Second Degree, Instruction 7.3-6.
- § 53a-196a: Employing a Minor in an Obscene Performance, Instruction 7.7-1.

**Element 2 - Against a person under thirteen years of age**

The second element is that the offense was committed against a person under thirteen years of age. This means that the complainant had not reached (his/her) thirteenth birthday at the time of the offense.

**Element 3 - Aggravating factor**

The third element is that in the commission of the *<insert underlying crime>*, *<insert as appropriate:>*

- the defendant kidnapped or illegally restrained the minor. *<See Section 6.5 Kidnapping and Unlawful Restraint.>*
- the defendant stalked the minor. *<See Stalking in the First Degree, Instruction 6.7-1, Stalking in the Second Degree, Instruction 6.7-2, and Stalking in the Third Degree, Instruction 6.7-3.>*
- the defendant used violence to commit such offense against the minor.
- the defendant caused serious physical injury to or disfigurement of the minor.
- there was more than one minor assaulted under thirteen years of age.
- the defendant was not known to the minor.
- the defendant has previously been convicted of a violent sexual assault.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that *<insert the concluding summary from the instruction for the underlying crime>*, and that *<insert aggravating factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of aggravated sexual assault of a minor, then you shall find the defendant guilty.

On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary***

This offense was created by Public Acts 2007, No. 143, § 3, effective July 1, 2007.

***Subsequent offenders***

General Statutes § 53a-70c (b) provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 53a-70c. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## **7.2 EVIDENCE IN SEXUAL ASSAULT CASES**

**7.2-1 Constancy of Accusation**

**7.2-2 Videotaped Testimony of Child Witness**

## 7.2-1 Constancy of Accusation

Revised to September 1, 2016

Note: The instruction to be given is governed by our Supreme Court's ruling in *State v. Daniel W. E.*, 322 Conn. 593 (2016).

[<If one or more constancy of accusation witnesses testified:>

In this case, you heard testimony that, sometime after the alleged sexual offense, <insert initials of complainant> made out-of-court statements to other persons <insert names of persons> about what had taken place. More particularly, there was testimony that <specify the particular testimony to which the constancy of accusation rule applies>.

The law recognizes that people might assume that anyone subjected to a sexual offense would complain within a reasonable time to someone to whom (he/she) ordinarily would turn for sympathy, protection or advice. If there was no evidence that a complainant made such a complaint, some might conclude that no sexual offense occurred.

As a result, in cases involving an allegation of a sexual offense, the state is permitted in certain circumstances to introduce evidence of out-of-court statements to other persons about what occurred. The only reason that the evidence is permitted is to negate the inference that the complainant failed to confide in anyone about the sexual offense. In other words, the narrow purpose of the constancy evidence is to negate any inference that <insert initials of complainant> failed to tell anyone about the sexual offense, and, therefore, that <insert initials of complainant>'s later assertion could not be believed.

Constancy evidence is not evidence that the sexual offense actually occurred, or that <insert initials of complainant> is credible. It merely serves to negate any inference that, because of <insert initials of complainant>'s assumed silence, the offense did not occur. It does not strengthen <insert initials of complainant>'s credibility. It does not prove the underlying truth of the sexual offense. Constancy evidence only dispels any negative inference that might be made from <insert initial of complainant>'s assumed silence.

In determining whether a complaint was in fact made, you may consider all the relevant factors in evidence. These include the <insert initials of complainant>'s age, demeanor, background, and relationship with both the defendant and the person(s) to whom the complaint was made. You may also consider the timeliness of the complaint, the context in which the complaint was made, any circumstances that would explain the delay in making the complaint and whether the complaint was volunteered or the result of an interrogation. It is up to you to determine what the facts are with regard to the circumstances of the complaint and what weight to give to these facts in determining whether a complaint was made.

As I have indicated earlier, this testimony was permitted for a limited purpose. The making of a complaint is not an element of the offense. Proof that a complaint was made is neither proof that the sexual offense occurred nor proof that <insert initials of complainant> was truthful. It merely dispels any negative inference that might arise from <insert initials of complainant>'s assumed silence. It eliminates any negative inference that <insert initials of complainant>'s claims of having been

sexually assaulted are false because of <insert initials of complainant>'s assumed failure to have confided in anyone about the sexual offense.]

[<If no constancy of accusation witness testified, but there was a delay in officially reporting the offense:>

There was evidence in this case that the complainant delayed in making an official report of the alleged sexual assault. There are many reasons why sexual assault victims may delay in officially reporting the offense, and to the extent the complainant delayed in reporting the alleged offense here, the delay should not be considered by you in evaluating (his or her) credibility.]

### ***Commentary***

See Code of Evidence, § 6-11 (c); *State v. Samuels*, 273 Conn. 541, 546-56 (2005); *State v. Troupe*, 237 Conn. 284 (1996). "[A] person to whom a sexual assault victim has reported the assault may testify only with respect to the fact and timing of the victim's complaint; any testimony by the witness regarding the details surrounding the assault must be strictly limited to those necessary to associate the victim's complaint with the pending charge, including, for example, the time and place of the attack or the identity of the alleged perpetrator." *Id.*, 304. See *State v. McKenzie-Adams*, 281 Conn. 486, 533-44 (2007) (reviewing the history and purpose of the constancy of accusation doctrine).

A limiting instruction may be given at the time a constancy of accusation witness testifies. See, e.g., *State v. Martin V.*, 102 Conn. App. 381, 393 n. 11, cert. denied, 284 Conn. 911 (2007).

In *State v. Daniel W. E.*, 322 Conn. 593 (2016), our Supreme Court modified the constancy of accusation doctrine, stating that "the victim in a sexual assault case should continue to be allowed to testify on direct examination regarding the facts of the sexual assault and the identity of the person or persons to whom the incident was reported. . . . Thereafter, if defense counsel challenges the victim's credibility by inquiring, for example, on cross-examination as to any out-of-court complaints or delayed reporting, the state will be permitted to call constancy of accusation witnesses subject to the limitations established in *Troupe*, as modified in this opinion. If defense counsel does not challenge the victim's credibility in any fashion on these points, the trial court shall not permit the state to introduce constancy testimony but, rather, shall instruct the jury that there are many reasons why sexual assault victims may delay in officially reporting the offense, and, to the extent the victim delayed in reporting the offense, the delay should not be considered by the jury in evaluating the victim's credibility." (Citation omitted; internal quotation marks omitted.) *Id.*, 629. The language of the instruction to be given if one or more constancy of accusation witnesses testify is based on New Jersey's model instruction, which was specifically set forth in modified form by our Supreme Court. See *id.*, 616-17 n.11.

## **7.2-2 Videotaped Testimony of Child Witness**

Revised to December 1, 2007

In this case you have been presented with videotaped testimony of *<insert name of child>*. You shall give this testimony the same weight as you would give it had (he/she) testified before you in this courtroom.

### ***Commentary***

See General Statutes § 54-86g; *State v. Jarzbek*, 204 Conn. 683, 707 (1987), cert. denied, 484 U.S. 1061, 108 S. Ct. 1017, 98 L. Ed. 2d 982 (1988). On the credibility of child witnesses, see commentary to Credibility, Instruction 2.4-2.

## **7.3 PROSTITUTION**

**7.3-1 Prostitution -- § 53a-82**

**7.3-2 Patronizing a Prostitute -- § 53a-83**

**7.3-3 Patronizing a Prostitute from Motor  
Vehicle -- § 53a-83a**

**7.3-4 Promoting Prostitution in the First Degree  
(Coercion) -- § 53a-86 (a) (1)**

**7.3-5 Promoting Prostitution (By a Minor) -- §  
53a-86 (a) (2)**

**7.3-6 Promoting Prostitution in the Second  
Degree -- § 53a-87**

**7.3-7 Promoting Prostitution in the Third Degree  
-- § 53a-88**

**7.3-8 Permitting Prostitution -- § 53a-89**

## 7.3-1 Prostitution -- § 53a-82

Revised to November 6, 2014

The defendant is charged [in count \_\_\_] with prostitution. The statute defining this offense reads in pertinent part as follows:

a person sixteen years of age or older is guilty of prostitution when such person (engages / agrees / offers to engage) in sexual conduct with another person in return for a fee.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sexual conduct**

The first element is that the defendant (engaged / agreed to / offered to engage) in sexual conduct with another person. The phrase "sexual conduct" is not defined in the law and has its ordinary meaning.<sup>1</sup> Any conduct of a sexual nature intended to gratify another person's sexual desire or sexual pleasure is included within the terms of this statute. Actual sexual conduct is not necessary for a conviction. An offer or solicitation or agreement to engage in sexual conduct with another person in return for a fee is sufficient. Also, gratuitous sex is not within the purview of the statute.

[<Insert if appropriate:> The sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial. Therefore, it is no defense that the persons were of the same sex or that the person who received, agreed to receive, or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was a female.]

### **Element 2 - Age<sup>2</sup>**

The second element is that the defendant was at least sixteen years of age at the time of the alleged conduct.

### **Element 3 - Fee**

The third element is that the sexual conduct, or the offer of sexual conduct, was in exchange for a fee. An offer or solicitation or agreement to engage in sexual conduct with another person in return for a fee is sufficient.

### **[Affirmative Defense<sup>3</sup>**

The statute defining this offense also defines an affirmative defense, which the defendant has raised. <See *Affirmative Defense, Instruction 2.9-1*.>

The defendant claims that (he/she) was a victim of trafficking in persons.<sup>4</sup> The elements of this crime are <refer to *Trafficking in Persons, Instruction 6.12-2*.>.]

## **Conclusion**

[<If defendant has not raised the affirmative defense:>

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (engaged / agreed to / offered to engage) in sexual conduct with another person, 2) the defendant was at least sixteen years old at the time, and 3) the sexual conduct was in return for a fee.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of prostitution, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.]

[<If defendant has raised the affirmative defense:>

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of prostitution, you shall then find the defendant not guilty and not consider the defendant's affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved (his/her) defense by a preponderance of the evidence, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.]

---

<sup>1</sup> *State v. Allen*, 37 Conn. Sup. 506, 510-11 (App. Sess. 1980).

<sup>2</sup> This element was added by P.A. No. 10-115, § 1, effective October 1, 2010. The public act also added subsection (c), which provides that if the defendant is sixteen or seventeen years of age, "there shall be a presumption that the actor was coerced into committing such offense by another person in violation of section 53a-192a."

<sup>3</sup> The affirmative defense was added by P.A. No. 10-115, § 1, effective October 1, 2010.

<sup>4</sup> The affirmative defense was amended by P.A. No. 12-166, § 3, effective October 1, 2012, to refer to Trafficking in Persons. The prior defense simply read "was coerced into committing such offense by another person."

### ***Commentary***

The constitutionality of § 53a-82 has been upheld in *State v. Butkus*, 37 Conn. Sup. 515 (App. Sess. 1980), and *State v. Allen*, 37 Conn. Sup. 506, 510-11 (App. Sess. 1980).

The mental state required is only the general intent to do the proscribed act. *State v. Butkus*, supra, 37 Conn. Sup. 517-19; *State v. Allen*, supra, 37 Conn. Sup. 513 n.4.

## 7.3-2 Patronizing a Prostitute -- § 53a-83

Revised to December 1, 2007 (modified November 6, 2014)

The defendant is charged [in count \_\_\_] with patronizing a prostitute. The statute defining this offense reads in pertinent part as follows:

a person is guilty of patronizing a prostitute when <insert appropriate subsection:><sup>1</sup>

- § 53a-83 (a) (1): pursuant to a prior understanding, (he/she) pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with (him/her).
- § 53a-83 (a) (2): (he/she) pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with (him/her).
- § 53a-83 (a) (3): (he/she) solicits or requests another person to engage in sexual conduct with (him/her) in return for a fee.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt that the defendant (paid / agreed to pay / offered to pay) a fee in exchange for an agreement to engage in sexual conduct. Gratuitous sex is not within the purview of the statute.

This law applies to situations in which the defendant makes payment either to a prostitute or to a procurer or a "pimp" pursuant to a prior understanding. This understanding must be that some person either has engaged or will engage in sexual conduct with the defendant. The phrase "sexual conduct" is not defined in the law and has its ordinary meaning.<sup>2</sup> Any conduct of a sexual nature intended to gratify another person's sexual desire or sexual pleasure is included within the terms of this statute. Actual sexual conduct is not necessary for a conviction. An offer or solicitation or agreement to engage in sexual conduct with another person in return for a fee is sufficient. Also, gratuitous sex is not within the purview of the statute.

[<Insert if appropriate:> It does not matter that the participating persons were of the same sex, or that the person who received, agreed to receive or solicited a fee, was a male and the person who paid for, agreed or offered to pay such a fee was a female.]

### Conclusion

In summary, the state must prove beyond a reasonable doubt the defendant (paid / agreed to pay / offered to pay) a fee in exchange for an agreement to engage in sexual conduct.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of patronizing a prostitute, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The three alternative ways of committing this offense vary in the timing of the transaction and whether a third party procurer is involved. The gist of the crime is the agreement to pay a fee for sexual services. Tailor the instruction to the facts alleged.

<sup>2</sup> *State v. Allen*, 37 Conn. Sup. 506, 510-11 (App. Sess. 1980).

*Commentary*

*Sentence Enhancer*

Effective October 1, 2013, the statute provides for an enhanced sentence if the defendant knew or reasonably should have known at the time of the offense that the victim (1) had not attained eighteen years of age, or (2) was the victim of trafficking in persons under state or federal law. See Trafficking in Persons, Instruction 6.12-2. The federal law is found in 18 U.S.C. §§ 1581-1597. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 7.3-3 Patronizing a Prostitute from Motor Vehicle -- § 53a-83a

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with patronizing a prostitute from a motor vehicle. The statute defining this offense reads in pertinent part as follows:

a person is guilty of patronizing a prostitute from a motor vehicle when (he/she), while occupying a motor vehicle: *<insert appropriate subsection:>*<sup>1</sup>

- § 53a-83a (a) (1): pursuant to a prior understanding, pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with (him/her).
- § 53a-83a (a) (2): pays or agrees to pay a fee to another person pursuant to an understanding that in return therefore such person or a third person will engage in sexual conduct with (him/her).
- § 53a-83a (a) (3): solicits or requests another person to engage in sexual conduct with (him/her) in return for a fee.
- § 53a-83a (a) (4): engages in sexual conduct for which a fee was paid or agreed to be paid.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Occupied motor vehicle

The first element is that the defendant occupied a motor vehicle. "Motor vehicle" means all vehicles used on a public highway and includes an automobile.

### Element 2 - Patronized a prostitute

The second element is that while occupying a motor vehicle, the defendant *<specify the alleged conduct>*. Sexual conduct has its ordinary meaning, that is, conduct of a sexual nature.<sup>2</sup> The respective sex of the defendant and other person is immaterial.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant occupied a motor vehicle, and 2) while in the motor vehicle *<summarize allegations>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of patronizing a prostitute from a motor vehicle, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The three alternative ways of committing this offense vary in the timing of the transaction and whether a third party procurer is involved. The gist of the crime is the agreement to pay a fee for sexual services. Tailor the instruction to the facts alleged.

<sup>2</sup> See *State v. Allen*, 37 Conn. Sup. 506, 510-11 (App. Sess. 1980).

## 7.3-4 Promoting Prostitution in the First Degree (Coercion) -- § 53a-86 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with promoting prostitution in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of promoting prostitution in the first degree when (he/she) knowingly *<insert one of the following:>*

- advances prostitution by compelling a person by force or intimidation to engage in prostitution.
- profits from coercive conduct by another in compelling a person by force or intimidation to engage in prostitution.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Knowingly advanced or profited from prostitution**

The first element is that the defendant knowingly (advanced / profited from) prostitution. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. *<See Knowledge, Instruction 2.3-3.>*

*<Insert one of the following:>*

- A person "advances prostitution" when, acting other than as a prostitute or as a patron thereof, (he/she) knowingly causes or aids a 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 institute, aid or facilitate an act or enterprise of prostitution.
- A person "profits from prostitution" when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, (he/she) accepts or receives money or other property pursuant to an agreement or understanding with any person whereby (he/she) participates or is to participate in the proceeds of prostitution activity.

### **Element 2 - By means of force or coercion**

The second element is that *<insert name of person>* was compelled by force or intimidation to engage in prostitution. Therefore, some element of compulsion such as force, intimidation, or coercive conduct must be present. *<Insert facts of alleged coercion.>*

[*<If defendant charged under (a) (2):>* The defendant does not have to have applied the coercive force (himself/herself). It is sufficient if (he/she) profits in any way from another person's coercive conduct.]

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant knowingly (advanced / profited from) prostitution, and 2) (he/she) did so by means of force or intimidation.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of promoting prostitution, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 7.3-5 Promoting Prostitution in the First Degree (By a Minor) -- § 53a-86 (a) (2)

Revised to May 20, 2011

**Note:** Public Acts 2010, No. 10-115, §§ 2 and 3, amended § 53a-86 (a) (2) and deleted § 53a-87 (a) (2), making Promoting Prostitution by a Minor a first degree offense when against anyone under 18 years of age. If the offense was against a person 16 or 17 years of age prior to October 1, 2010, it was second degree.

The defendant is charged [in count \_\_\_] with promoting prostitution in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of promoting prostitution in the first degree when (he/she) knowingly (advances / profits from) prostitution of a person less than eighteen years old.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Knowingly advanced or profited from prostitution**

The first element is that the defendant knowingly (advanced / profited from) prostitution. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See Knowledge, Instruction 2.3-3.>

<Insert one of the following:>

- A person "advances prostitution" when, acting other than as a prostitute or as a patron thereof, (he/she) knowingly causes or aids a 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 institute, aid or facilitate an act or enterprise of prostitution.
- A person "profits from prostitution" when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, (he/she) accepts or receives money or other property pursuant to an agreement or understanding with any person whereby (he/she) participates or is to participate in the proceeds of prostitution activity.

### **Element 2 - By a minor**

The second element is that the person acting as a prostitute was less than eighteen years of age.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant knowingly (advanced / profited from) prostitution, and 2) the person acting as a prostitute was less than eighteen years of age.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of promoting prostitution in the (first / second) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

*Commentary*

"An act of promoting prostitution does not necessarily constitute a violation of the statute that prohibits risk of injury to a child, and vice versa. Promoting prostitution requires a specific intent; the actor must knowingly advance or profit from prostitution of a person less than sixteen years old." (Internal quotation marks omitted.) *State v. Aldrich*, 53 Conn. App. 627, 635, cert. denied, 250 Conn. 909 (1999).

## 7.3-6 Promoting Prostitution in the Second Degree -- § 53a-87

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with promoting prostitution in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of promoting prostitution in the second degree when (he/she) knowingly (advances / profits from) prostitution by (managing / supervising / controlling / owning), either alone or in association with others, (a house of prostitution / a prostitution business or enterprise) involving prostitution activity by two or more prostitutes.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Knowingly advanced or profited from prostitution**

The first element is that the defendant knowingly (advanced / profited from) prostitution. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See *Knowledge, Instruction 2.3-3.*>

<Insert one of the following:>

- A person "advances prostitution" when, acting other than as a prostitute or as a patron thereof, (he/she) knowingly causes or aids a 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 institute, aid or facilitate an act or enterprise of prostitution.
- A person "profits from prostitution" when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, (he/she) accepts or receives money or other property pursuant to an agreement or understanding with any person whereby (he/she) participates or is to participate in the proceeds of prostitution activity.

### **Element 2 - As a business enterprise**

The second element is that the defendant knowingly (advanced / profited from) prostitution by (managing / supervising / controlling / owning), either alone or in association with others, (a house of prostitution / a prostitution business or enterprise) involving prostitution activity by two or more prostitutes. These words have their ordinary meanings.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (advanced / profited from) prostitution, and 2) (he/she) did so by means of (managing / supervising / controlling / owning), either alone or in association with others, (a house of prostitution / a prostitution business or enterprise) involving prostitution activity by two or more prostitutes.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of promoting prostitution in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 7.3-7 Promoting Prostitution in the Third Degree -- § 53a-88

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with promoting prostitution in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of promoting prostitution in the third degree when (he/she) knowingly (advances / profits from) prostitution.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt that the defendant knowingly (advanced / profited from) prostitution. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See *Knowledge, Instruction 2.3-3.*>

<Insert one of the following:>

- A person "advances prostitution" when, acting other than as a prostitute or as a patron thereof, (he/she) knowingly causes or aids a 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 institute, aid or facilitate an act or enterprise of prostitution.
- A person "profits from prostitution" when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, (he/she) accepts or receives money or other property pursuant to an agreement or understanding with any person whereby (he/she) participates or is to participate in the proceeds of prostitution activity.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant (advanced / profited from) prostitution.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of promoting prostitution in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 7.3-8 Permitting Prostitution -- § 53a-89

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with permitting prostitution. The statute defining this offense reads in pertinent part as follows:

a person is guilty of permitting prostitution when, having possession or control of premises which (he/she) knows are being used for prostitution purposes, (he/she) fails to make reasonable effort to halt or abate such use.

The law requires that a person who is the owner, manager, or person in any capacity in possession or control of the premises take some positive action to halt the use of the premises for purposes of prostitution when (he/she) knows they are being used for such purposes.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Possession or control of premises**

The first element is that the defendant was in possession or control of the premises. The words "possession or control of the premises" as used in the statute are to be given their ordinary meaning.

### **Element 2 - Knowledge of prostitution**

The second element is that the defendant knew the premises were being used for purposes of prostitution. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See *Knowledge, Instruction 2.3-3.*>

### **Element 3 - No efforts to stop it**

The third element is that the defendant made no reasonable efforts to halt its use for such purposes. The state must prove beyond a reasonable doubt that what the defendant did, if anything, was not a reasonable effort under the circumstances.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was in possession or control of premises, 2) (he/she) knew that the premises were being used for prostitution, and 3) (he/she) made no reasonable efforts to stop the prostitution.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of permitting prostitution, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **7.4 OBSCENITY**

**7.4-1 Obscenity -- § 53a-194**

**7.4-2 Defense to Obscenity -- § 53a-195**

**7.4-3 Obscenity as to Minors -- § 53a-196**

**7.4-4 Affirmative Defense to Obscenity as to  
Minors -- § 53a-196 (c)**

## 7.4-1 Obscenity -- § 53a-194

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with obscenity. The statute defining this offense reads in pertinent part as follows:

a person is guilty of obscenity when, knowing its content and character, (he/she) (promotes / possesses with intent to promote) any obscene material or performance.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Obscene material**

The first element is that the (material / performance) in question is obscene. In determining this, put away all your preconceived opinions and beliefs about what constitutes obscenity and let me read to you the statutory definition of obscenity. The law states that any material or performance is "obscene" if 1) taken as a whole, it predominantly appeals to the prurient interest, 2) it depicts or describes in a patently offensive way a prohibited sexual act, and 3) taken as a whole, it lacks serious literary, artistic, educational, political, or scientific value.

"Predominant appeal" shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its distribution to be designed for some other specially susceptible audience. Whether the material or performance is obscene shall be judged by ordinary adults applying contemporary community standards.<sup>1</sup> In applying contemporary community standards, the state of Connecticut is deemed to be the community.

"Prurient" refers to lustful, lascivious, or lewd propensities in persons. Under this definition, nudity by itself is not obscene.

"Prohibited sexual act" means erotic fondling, nude performance, sexual excitement, sado-masochistic abuse, masturbation or sexual intercourse. "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast. "Nude performance" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state in any play, motion picture, dance or other exhibition performed before an audience. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal. "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed. "Masturbation" means real or simulated touching, rubbing or otherwise stimulating a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast, either by manual manipulation or with an artificial instrument. "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

Now, you will recall that you are required to apply contemporary community standards, and the community has been defined in this section as the state of Connecticut. In determining the guilt or innocence of this defendant, you must apply what you believe the Connecticut standard is with regard to obscenity. Also, you must regard this conduct or behavior as a whole, and you must judge the impact of this material or performance upon the ordinary person rather than upon a particularly susceptible or sensitive person. However, if such material is designed for children or other specially susceptible persons, the material or performance must be judged according to the impact of it upon those persons.

Under this statute, "material" includes anything tangible that is capable of being used or adapted to arouse prurient, shameful or morbid interest, whether through the medium of reading, observation, sound or in any other manner. Undeveloped photographs, molds, printing plates, and the like may be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it. "Performance," in this statute, includes any play, motion picture, dance or other exhibition performed before an audience.

Such material or performance, considered as a whole, must lack serious literary, artistic, educational, political or scientific value. The work or performance must be considered as a whole. If the work or performance under consideration predominately appeals to the prurient interest in sex of the ordinary person, and it depicts or describes in a patently offensive way a prohibited sexual act as defined for you, it should be regarded as obscene.

### **Element 2 - Promoted or possessed with intent to promote**

The second element is that the defendant (promoted / possessed with the intent to promote) any obscene material or performance. To "promote" material or a performance means to (manufacture / issue / sell / give / provide / lend / mail / deliver / transfer / transmit / publish / distribute / circulate / disseminate / present / exhibit / advertise / produce / direct / participate in) the material or performance. You will note that all these terms relate in some measure to business operations. It is not a crime to merely possess any of this material that is capable of being used or adapted to arouse interest in a person's own home or even to display such material or performance to friends in some private setting.

### **Element 3 - Knowingly**

The third element is that the defendant knew the content and character of this material. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See *Knowledge, Instruction 2.3-3.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the material or performance was obscene, 2) the defendant (promoted / possessed with the intent to promote) the material or performance, and 3) (he/she) had knowledge of the contents.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of obscenity, then you shall find the defendant guilty. On the other hand, if you

unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See *State v. Gagliardi*, 174 Conn. 46 (1977) (state must offer evidence of community standards).

## 7.4-2 Defense to Obscenity -- § 53a-195

Revised to December 1, 2007

The state has the burden of proving beyond a reasonable doubt that the defendant committed the crime of obscenity. The law also recognizes that under certain circumstances a person might be justified in possessing allegedly obscene material. In the case of enforcement officials, universities, and other persons or institutions having some governmental, educational, or scientific interest in the material, it is a defense that the audience to an allegedly obscene performance, or the persons to whom allegedly obscene material was disseminated, consisted of persons or institutions having scientific, educational, governmental, or similar justification for possessing or viewing the same.

The state has the burden of disproving this defense beyond a reasonable doubt.

### Conclusion

*<Substitute for the concluding paragraph in the offense instruction.>* If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of obscenity, you shall then find the defendant not guilty and not consider (his/her) defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defense of justification. If you unanimously find that the state has disproved the defense beyond a reasonable doubt, you must reject that defense and find the defendant guilty. If, on the other hand, you unanimously find that the state has not disproved the defense beyond a reasonable doubt, then on the strength of that defense alone you must find the defendant not guilty of obscenity despite the fact that you have found the elements of that crime proven beyond a reasonable doubt.

## 7.4-3 Obscenity as to Minors -- § 53a-196

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with obscenity as to minors. The statute defining this offense reads in pertinent part as follows:

a person is guilty of obscenity as to minors when (he/she) knowingly promotes to a minor, for monetary consideration, any material or performance which is obscene as to minors.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Materials that are obscene to minor**

The first element is that the (material / performance) is obscene as to minors. Material or performance is "obscene as to minors" if it depicts a prohibited sexual act and, taken as a whole, is harmful to minors. "Minor" means any person less than seventeen years old. "Harmful to minors" means any description or representation, in whatever form, of a prohibited sexual act, when that description or representation (A) predominantly appeals to the prurient, shameful or morbid interest of minors, (B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (C) taken as a whole it lacks serious literary, artistic, educational, political or scientific value for minors. "Prurient" refers to lustful, lascivious or lewd propensities in persons.

"Prohibited sexual act" means erotic fondling, nude performance, sexual excitement, sado-masochistic abuse, masturbation or sexual intercourse. "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast. "Nude performance" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state in any play, motion picture, dance or other exhibition performed before an audience. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal. "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed. "Masturbation" means real or simulated touching, rubbing or otherwise stimulating a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast, either by manual manipulation or with an artificial instrument. "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

Not all material that at first glance has some of these qualities is forbidden under the law. Materials that merely appeal to a minor's curiosity as to sex or the anatomical differences between sexes does not fall within the proscription of the statute. Also, genuine works of art, literature and educational texts that have redeeming social value and are not presented in such a manner as to appeal to the prurient interest in people for commercial gain are likewise not

prohibited under the statute. You must also bear in mind the era in which we are now living. Material that might have been considered vulgar twenty years ago is no longer so regarded. Furthermore, you should be aware that different parts of the country have varying standards and attitudes toward what is called obscenity.

### **Element 2 - Knowingly promoted**

The second element is that the defendant promoted such material or performance with knowledge of its character and contents. "Knowingly" in this context<sup>1</sup> means having general knowledge of or reason to know or a belief or ground for belief that warrants further inspection or inquiry as to the character and content of any material or performance that is reasonably susceptible of examination by such person. "Promote" means to (manufacture / issue / sell / give / provide / lend / mail / deliver / transfer / transmit / publish / distribute / circulate / disseminate / present / exhibit / advertise / produce / direct / participate in) the material or performance.

### **Element 3 - To a minor**

The third element is that the person to whom the obscene (material / performance) was promoted was a minor. A minor is a person less than 17 years of age. This means that the person has not reached (his/her) 17th birthday. The defendant must have known or had reason to know that the person was a minor.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the (material / performance) was obscene as to minors, 2) the defendant promoted the (materials / performance) to another person, knowing of its character and contents, and 3) knew that the other person was a minor.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of obscenity as to minors, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-196 provides this definition of "knowingly," for the purposes of this offense.

### ***Commentary***

See generally *State v. Parsons*, 28 Conn. App. 91, cert. denied, 223 Conn. 920 (1992).

## 7.4-4 Affirmative Defense to Obscenity as to Minors -- § 53a-196 (c)

Revised to December 1, 2007

The state has the burden of proving beyond a reasonable doubt that the defendant committed the crime of obscenity as to minors. If you are satisfied that the state has proved these elements beyond a reasonable doubt, you must still consider whether the defendant has proved by a preponderance of the evidence (his/her) affirmative defense.

*<Insert Affirmative Defense, Instruction 2.9-1.>*

This statute defining this defense provides as follows:

in any prosecution for obscenity as to minors, it shall be an affirmative defense that the defendant made (1) a reasonable mistake as to age, and (2) a reasonable bona fide attempt to ascertain the true age of such minor, by examining a draft card, driver's license, birth certificate or other official or apparently official document, exhibited by such minor, purporting to establish that such minor was seventeen years of age or older.

If there is any doubt or question about the minor's age, the defendant is required to ask the minor to exhibit a draft card, driver's license, or some other certificate that would attest to the age of the person. If such document or certificate is exhibited to the defendant, and it reasonably purports to show that the minor involved is seventeen years old or more, you may find, but are not required to do so, that the defendant made a reasonable bona fide attempt to ascertain the age of the other person. It does not prevent the use of this defense even if it might subsequently develop that the document was forged or was actually the property of another and not that of the bearer.

### **Conclusion**

*<Substitute for the concluding paragraph in the offense instruction.>* If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of obscenity as to minors, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

## **7.5 VOYEURISM AND PUBLIC INDECENCY**

**7.5-1 Voyeurism -- § 53a-189a**

**7.5-2 Public Indecency -- § 53a-186**

## 7.5-1 Voyeurism -- § 53a-189a

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with voyeurism. The statute defining this offense reads in pertinent part as follows:

a person is guilty of voyeurism when, *<insert appropriate subsection:>*

- § 53a-189a (a) (1): with malice,
- § 53a-189a (a) (2): with intent to arouse or satisfy the sexual desire of such person or any other person,

such person knowingly photographs, films, videotapes or otherwise records the image of another person without the knowledge and consent of such other person, while such other person is not in plain view, and under circumstances where such other person has a reasonable expectation of privacy.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Recorded images**

The first element is that the defendant photographed, filmed, videotaped or otherwise recorded the image of another person.

### **Element 2 - Knowingly**

The second element is that (he/she) did so knowingly. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. *<See Knowledge, Instruction 2.3-3.>* In other words, the defendant must have been aware that he was photographing, filming, videotaping or otherwise recording the image of another person.

### **Element 3 - With malice or intent**

The third element is that the defendant acted with *<insert as appropriate:>*

- malice. To act "with malice" means to act with some improper or unjustifiable or harmful motive including, but not limited to, the desire to cause pain, injury or distress to another.
- the specific intent to arouse or satisfy either (his/her) own sexual desires or the sexual desires of some other person.

### **Element 4 - Privacy**

The fourth element is that the other person did not know and consent to the recording, was not in plain view, and was in circumstances where (he/she) had a reasonable expectation of privacy. A person has a reasonable expectation of privacy when (he/she) has shown a subjective expectation of privacy and the expectation is one that society considers reasonable.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant photographed, filmed, videotaped or otherwise recorded the image of *<insert name of person>*, 2) (he/she) did so knowingly, 3) (he/she) did so with (malice / intent to arouse or satisfy the sexual desires of

(himself/herself) or some other person), and 4) *<insert name of person>* did not know and consent to the recording, was not in plain view, and was in circumstances where (he/she) had a reasonable expectation of privacy.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of voyeurism, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 7.5-2 Public Indecency -- § 53a-186

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with public indecency. The statute defining this offense reads in pertinent part as follows:

a person is guilty of public indecency when (he/she) performs (an act of sexual intercourse / a lewd exposure of the body with intent to arouse or to satisfy the sexual desire of the person / a lewd fondling or caress of the body of another person) in a public place.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Indecent act

The first element is that the defendant performed an act involving *<insert one or more of the following:>*

- sexual intercourse. "Sexual intercourse" mean vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex.
- lewd exposure of the body with intent to arouse or to satisfy (his/her) sexual desire. "Lewd" means obscene or indecent. "Expose" means to lay open, to display, or to reveal. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*
- a lewd fondling or caressing of the body of another person. "Lewdly" means obscenely or indecently. "Caress" means to touch or stroke.

### Element 2 - In a public place

The second element you must find beyond a reasonable doubt is that the act occurred in a public place. "Public place" means any place where the conduct may reasonably be expected to be viewed by others.<sup>1</sup>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant performed an indecent act, specifically *<insert alleged act>*, and 2) did so in a public place.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of public indecency, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Cutro*, 37 Conn. App. 534, 543 (1995) (defendant standing in front of the window in his apartment was "in a public place" for purposes of this statute because he was easily viewed by others); *State v. Vega*, 38 Conn. Sup. 313, 315 (App. Sess. 1982) (same).

***Commentary***

Conviction of both public indecency and breach of the peace is not inconsistent because each one requires a different mental state. *State v. Morascini*, 62 Conn. App. 758, 763, cert. denied, 256 Conn. 921 (2001).

## **7.6 AGAINST CHILDREN**

**7.6-1 Enticing a Minor -- § 53a-90a**

**7.6-2 Misrepresentation of Age to Entice a Minor  
-- § 53a-90b**

## 7.6-1 Enticing a Minor -- § 53a-90a

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with using a computer to entice a minor into sexual activity. The statute defining this offense reads in pertinent part as follows:

a person is guilty of enticing a minor when such person uses an interactive computer service to knowingly (persuade / induce / entice / coerce) any person under sixteen years of age to engage in (prostitution / sexual activity) for which the actor may be charged with a criminal offense.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Enticed a minor into prostitution or sexual activity**

The first element is that the defendant knowingly (persuaded / induced / enticed / coerced) another person into engaging in (prostitution / sexual activity). *<Insert appropriate definition:>*

- Prostitution is defined as engaging or agreeing or offering to engage in sexual conduct with another person in return for a fee.<sup>1</sup> "Sexual conduct" means behavior involving sex, the organs of sex and their functions or the instincts and drives associated with sex.<sup>2</sup> A "fee" is any form of compensation or payment.
- Sexual activity. "Sexual activity" means conduct or behavior involving sex, the organs of sex and their functions or the instincts and drives associated with sex.<sup>3</sup>

A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. *<See Knowledge, Instruction 2.3-3.>*

### **Element 2 - Other person under 16 years of age**

The second element is that at the time of the incident, the other person was under the age of (thirteen / sixteen). This means that the person had not yet had (his/her) (thirteenth / sixteenth) birthday when the conduct is alleged to have taken place.<sup>4</sup>

### **Element 3 - Prostitution / Sexual activity**

The third element is that the sexual activity which the defendant (persuaded / induced / enticed / coerced) the other person to engage in is one for which the defendant may be charged with a criminal offense. It is not necessary that the defendant actually be charged with such an offense, but simply that the sexual activity in which the defendant intended to engage is proscribed or prohibited by law. *<Insert the particular conduct, including prostitution, which the state claims and the evidence supports as the sexual activity in which the defendant intended to have the minor engage, and the criminal charge(s) that it would support.>*<sup>5</sup>

### **Element 4 - Computer**

The fourth element is that the defendant used an interactive computer service to accomplish this activity. As defined by this statute, an "interactive computer service" means any information service, system or access software provider that provides or enables computer access by multiple

users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.<sup>6</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant enticed another person to engage in (prostitution / sexual activity), 2) that other person was under 16 years of age, 3) the sexual activity is one for which the defendant could be criminally liable, and 4) the defendant used an interactive computer system.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the use of a computer to entice a child into sexual activity, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See Prostitution, Instruction 7.3-1.

<sup>2</sup> See *State v. Allen*, 37 Conn. Sup. 506, 510-11 (App. Sess. 1980).

<sup>3</sup> The statutes concerning prostitution and pornography use both the terms "sexual activity" and "sexual conduct." They do not seem to be readily distinguishable.

<sup>4</sup> When an attempt is alleged, the trial court must instruct the jury that the defendant believed that the other person was under 16 years of age. See *State v. Sorabella*, 277 Conn. 155, 191, cert. denied, 549 U.S. 821, 127 S.Ct. 131, 166 L.Ed.2d 36 (2006) (defendant convicted of attempt to entice a minor when the other person was an undercover police officer, but the defendant believed he was communicating with a 13-year old).

<sup>5</sup> The court should inquire of the state what the underlying criminal offense(s) are being claimed if not expressly contained in the information.

<sup>6</sup> General Statutes § 53a-90a (a).

### ***Commentary***

#### ***Sentence Enhancers***

Effective July 1, 2007, § 53a-90a (b) (2) provides an enhanced penalty if the victim is under 13 years of age. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

#### ***Subsequent Offenders***

General Statutes § 53a-90a (b) provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 53a-90a. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## 7.6-2 Misrepresentation of Age to Entice a Minor -- § 53a-90b

New, June 13, 2008

**Note:** Public Acts, Spec. Sess., June, 2007, 07-4, § 97, which created this offense, became effective October 1, 2007.

The defendant is charged [in count \_\_\_] with misrepresentation of age to entice a minor. The statute defining this offense reads in pertinent part as follows:

a person is guilty of misrepresentation of age to entice a minor when such person, in the course of and in furtherance of the commission of enticing a minor, intentionally misrepresents such person's age.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed enticing a minor**

The first element is that the defendant committed enticing a minor. <Insert the elements from *Enticing a Minor, Instruction 7.6-1.*>

### **Element 2 - Misrepresented age**

The second element is that, in the course of and in furtherance of that offense, the defendant intentionally misrepresented (his/her) age. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that <insert the concluding summary from the instruction for enticing a minor>, and that the defendant intentionally misrepresented (his/her) age.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of misrepresentation of age to entice a child, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **7.7 CHILD PORNOGRAPHY**

**7.7-1 Employing a Minor in an Obscene Performance -- § 53a-196a**

**7.7-2 Promoting a Minor in an Obscene Performance -- § 53a-196b**

**7.7-3 Importing Child Pornography -- § 53a-196c**

**7.7-4 Possessing Child Pornography -- §§ 53a-196d, 53a-196e, and 53a-196f**

**7.7-5 Affirmative Defenses to Child Pornography Possession -- § 53a-196g**

**7.7-6 Possessing or Transmitting Child Pornography by Minor -- § 53a-196h**

## 7.7-1 Employing a Minor in an Obscene Performance -- § 53a-196a

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with employing a minor in an obscene performance. The statute defining this offenses reads in pertinent part as follows:

a person is guilty of employing a minor in an obscene performance when (he/she)

<insert appropriate subsection:>

- **§ 53a-196a (a) (1):** employs any minor, whether or not such minor receives any consideration, for the purpose of promoting any material or performance which is obscene as to minors, notwithstanding that such material or performance is intended for an adult audience.
- **§ 53a-196a (a) (2):** permits any minor to be employed, whether or not such minor receives any consideration, in the promotion of any material or performance which is obscene as to minors, notwithstanding that such material or performance is intended for an adult audience, and (he/she) is the parent or guardian of such minor or otherwise responsible for the general supervision of such minor's welfare.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Minor under 16 years of age**

The first element is that at the time of the defendant's conduct the minor was under 16 years of age. This means that the child had not yet had his/her sixteenth birthday when the alleged conduct took place.<sup>1</sup>

### **Element 2 - Employed in obscene performance**

The second element is that the defendant (employed the minor for the purpose of promoting / permitted the minor to be employed in the promotion of ) any material or performance which is obscene as to minors.

To "employ" a minor means to use or make use of the minor. It does not mean to hire the minor for wages or a salary. In fact, the statute specifically provides that using a minor to promote material or a performance that is obscene as to minors is a crime whether or not the minor receives any consideration, that is, whether or not the minor receives anything of value in return for (his/her) services. So, in order for the defendant to be convicted of this charge, it is not necessary for the state to prove that the minor received anything of value in return for (his/her) services.

A "performance" is any play, motion picture, dance or other exhibition performed before an audience. "Material" means anything tangible which is capable of being used or adapted to arouse prurient, shameful or morbid interest, whether through the medium of reading, observation, sound or in any other manner. Undeveloped photographs, molds, printing plates, and the like, may be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

A performance or material is "obscene as to minors" if it depicts a prohibited sexual act and, taken as a whole, it is harmful to minors. "Harmful to minors" means that quality of any description or representation, in whatever form, of a prohibited sexual act, when (i) it predominantly appeals to the prurient, shameful or morbid interest of minors, (ii) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) taken as a whole, it lacks serious literary, artistic, educational, political or scientific value for minors.

A "prohibited sexual act" means erotic fondling, nude performance, sexual excitement, sado-masochistic abuse, masturbation or sexual intercourse. "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast. "Nude performance" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state in any play, motion picture, dance or other exhibition performed before an audience. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal. "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed. "Masturbation" means the real or simulated touching, rubbing or otherwise stimulating a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast, either by manual manipulation or with an artificial instrument. "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

Under this charge, as long as the performance or material meets the definition of being "obscene as to minors," it does not matter that the material or performance was intended for an adult audience.<sup>2</sup>

[<Include only if the defendant is charged under § 53a-196a (a) (2):>

### **Element 3 - Parent or guardian**

The third element is that the defendant is the parent or guardian of the minor or is otherwise responsible for the general supervision of the minor's welfare and permits that minor to be employed in the promotion of any material or performance which is obscene as to minors.]

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) <insert name of minor> was under the age of 16, [and] 2) the defendant (employed / permitted to be employed) <insert name of minor> in an obscene performance, [and] 3) the defendant is the parent or guardian of <insert name of minor>.]

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of employing a minor in an obscene performance, then you shall find the defendant

guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> When an attempt is alleged, the trial court must instruct the jury that it must find that the defendant believed that the other person is under 16 years of age. See *State v. Sorabella*, 277 Conn. 155, 191, cert. denied, 549 U.S. 821, 127 S.Ct. 131, 166 L.Ed.2d 36 (2006) (defendant convicted of attempt to entice a minor when the other person was an undercover police officer, but the defendant believed he was communicating with a 13-year old).

<sup>2</sup> The term "audience" "may consist of a single photographer of the live performance or a single person viewing photographs of the performance." *State v. Ernesto P.*, 135 Conn. App. 215, 231 (2012).

## 7.7-2 Promoting a Minor in an Obscene Performance -- § 53a-196b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with promoting a minor in an obscene performance. The statute defining this offense reads in pertinent part as follows:

a person is guilty of promoting a minor in an obscene performance when (he/she) knowingly promotes any material or performance in which a minor is employed, whether or not such minor receives any consideration, and such material or performance is obscene as to minors notwithstanding that such material or performance is intended for an adult audience.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Minor under 16 years of age**

The first element is that at the time of the defendant's conduct the minor was under 16 years of age. This means that the child had not yet had his/her sixteenth birthday when the alleged conduct took place.<sup>1</sup>

### **Element 2 - Promoted obscene performance**

The second element is that the defendant promoted any material or performance in which a minor is employed and such material or performance is obscene as to minors.

To "promote" material or a performance means to (manufacture / issue / sell / give / provide / lend / mail / deliver / transfer / transmit / publish / distribute / circulate / disseminate / present / exhibit / advertise / produce / direct / participate in) the material or performance.

A minor is "employed" in material or a performance when the minor is used or made use of in that material or performance. The minor does not have to have been hired for wages or a salary. In fact, the statute specifically provides that using a minor to promote material or a performance that is obscene as to minors is a crime whether or not the minor receives any consideration, that is, whether or not the minor receives anything of value in return for (his/her) services. So, in order for the defendant to be convicted of this charge, it is not necessary for the state to prove that the minor received anything of value in return for (his/her) services.

A "performance" is any play, motion picture, dance or other exhibition performed before an audience. "Material" means anything tangible which is capable of being used or adapted to arouse prurient, shameful or morbid interest, whether through the medium of reading, observation, sound or in any other manner. Undeveloped photographs, molds, printing plates, and the like, may be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

A performance or material is "obscene as to minors" if it depicts a prohibited sexual act and, taken as a whole, it is harmful to minors. "Harmful to minors" means that quality of any

description or representation, in whatever form, of a prohibited sexual act, when (i) it predominantly appeals to the prurient, shameful or morbid interest of minors, (ii) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) taken as a whole, it lacks serious literary, artistic, educational, political or scientific value for minors.

A "prohibited sexual act" means erotic fondling, nude performance, sexual excitement, sado-masochistic abuse, masturbation or sexual intercourse. "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast. "Nude performance" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state in any play, motion picture, dance or other exhibition performed before an audience. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal. "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed. "Masturbation" means the real or simulated touching, rubbing or otherwise stimulating a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast, either by manual manipulation or with an artificial instrument. "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

Under this charge, as long as the performance or material meets the definition of being "obscene as to minors," as I have given that to you, it does not matter that the material or performance was intended for an adult audience.

### **Element 3 - Knowledge**

The third element is that the defendant acted knowingly. "Knowingly" in this context<sup>2</sup> means that the defendant had general knowledge of or reason to know or a belief or ground for belief which warrants further inspection or inquiry as to the character and content of any material or performance which is reasonably susceptible of examination by the defendant and the age of the minor employed.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the minor was under 16 years of age, 2) the defendant promoted the minor in an obscene performance, and 3) the defendant did so knowingly.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of promoting a minor in an obscene performance, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> When an attempt is alleged, the trial court must instruct the jury that it must find that the defendant believed that the other person is under 16 years of age. See *State v. Sorabella*, 277 Conn. 155, 191, cert. denied, 549 U.S. 821, 127 S.Ct. 131, 166 L.Ed.2d 36 (2006) (defendant convicted of attempt to entice a minor when the other person was an undercover police officer, but the defendant believed he was communicating with a 13-year old).

<sup>2</sup> General Statutes § 53a-196b provides this definition of "knowingly" for the purposes of this offense.

## 7.7-3 Importing Child Pornography -- § 53a-196c

Revised to November 6, 2014

The defendant is charged [in count \_\_\_] with importing child pornography. The statute defining this offense reads in pertinent part as follows:

a person is guilty of importing child pornography when, with intent to promote child pornography, such person knowingly imports or causes to be imported into the state three or more visual depictions of child pornography of known content and character.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Imported child pornography**

The first element is that the defendant imported child pornography or caused child pornography to be imported into the state. To "cause to be imported" means to engage in conduct that results in the importation of child pornography. "Into the state" means into the state of Connecticut.

"Child pornography" is any visual depiction, including any photograph, film, videotape, picture or computer-generated image or picture, whether made or produced by electronic, digital, mechanical or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a person under sixteen years of age engaging in sexually explicit conduct, provided whether the subject of a visual depiction was a person under sixteen years of age at the time the visual depiction was created is a question to be decided by the trier of fact.

"Sexually explicit conduct" means actual or simulated (A) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal physical contact, whether between persons of the same or opposite sex, or with an artificial genital, (B) bestiality, (C) masturbation, (D) sadistic or masochistic abuse, or (E) lascivious exhibition of the genitals or pubic area of any person.

The person depicted must be under 16 years of age; that is, (he/she) must not yet have had (his/her) sixteenth birthday when the prohibited conduct is alleged to have taken place.

Furthermore, the state must prove beyond a reasonable doubt that the person depicted was or is an actual, real person. For example, a "virtual" or computer-generated image would not fall into this category.

### **Element 2 - Knowingly**

The second element is that (he/she) acted knowingly. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See Knowledge, Instruction 2.3-3.> The state must prove that the defendant knew (he/she) was importing or causing to be imported into Connecticut visual depictions, and that (he/she) knew the content and character of the visual depictions, that is, that (he/she) knew they were child pornography.

**Element 3 - Number of depictions**

The third element is that the defendant imported or caused to be imported into the state three or more visual depictions of child pornography. A "visual depiction" includes undeveloped film and videotape and information of any kind in any form, including computer software, that is capable of conversion into a visual image and includes encrypted data. It does not matter whether the visual depictions are different images or multiple copies of the same image.<sup>1</sup>

**Element 4 - Intent**

The fourth element is that (he/she) had the specific intent to promote child pornography. A person acts "intentionally" with respect to conduct when his conscious objective is to engage in such conduct. <See *Intent: Specific, Instruction 2.3-1.*> To "promote" means to (manufacture / issue / sell / give / provide / lend / mail / deliver / transfer / transmit / publish / distribute / circulate / disseminate / present / exhibit / advertise / produce / direct / participate in).

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (imported child pornography / caused child pornography to be imported) into this state, 2) (he/she) did so knowingly, 3) it consisted of three or more visual depictions, and 4) (he/she) did so with the specific intent to promote child pornography.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of importing child pornography, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See *State v. Sorabella*, 277 Conn. 155, 204-206, cert. denied, 549 U.S. 821, 127 S.Ct. 131, 166 L.Ed.2d 36 (2006).

***Commentary***

See generally *State v. Sorabella*, supra, 277 Conn. 155.

## 7.7-4 Possessing Child Pornography -- § 53a-196d, § 53a-196e, and § 53a-196f

Revised to November 6, 2014

**Note:** The degree of the offense depends on the number of images. See § 53a-196d (first degree: 50 or more images or one or more images depicting infliction of serious physical injury); § 53a-196e (second degree: more than 20 images but fewer than 50); § 53a-196f (third degree: fewer than 20 images).

The defendant is charged [in count \_\_\_] with possessing child pornography in the (first / second / third) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of possessing child pornography in the (first / second / third) degree when such person knowingly possesses (fifty or more / twenty or more but fewer than fifty / fewer than twenty / one or more) visual depictions of child pornography [that depict the infliction or threatened infliction of serious physical injury].

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Possession**

The first element is that the defendant possessed child pornography.

"Child pornography" is any visual depiction, including any photograph, film, videotape, picture or computer-generated image or picture, whether made or produced by electronic, digital, mechanical or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a person under 16 years of age engaging in sexually explicit conduct, provided whether the subject of a visual depiction was a person under 16 years of age at the time the visual depiction was created is a question to be decided by the trier of fact.

"Sexually explicit conduct" means actual or simulated (A) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal physical contact, whether between persons of the same or opposite sex, or with an artificial genital, (B) bestiality, (C) masturbation, (D) sadistic or masochistic abuse, or (E) lascivious exhibition of the genitals or pubic area of any person.

"Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital. "Masturbation" means the real or simulated touching, rubbing or otherwise stimulating a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast, either by manual manipulation or with an artificial instrument. "Sadistic or masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed. A "lascivious" exhibition of the genitals or pubic area is an exhibition that is lewd or lustful.

Furthermore, the state must prove beyond a reasonable doubt that the person depicted was or is an actual, real person. For example, a "virtual" or computer-generated image would not fall into this category.

The defendant must possess the child pornography; that means (he/she) must have physical possession of it or otherwise exercise dominion or control over it. <See *Possession, Instruction 2.11-1.*>

### **Element 2 - Knowingly**

The second element is that (he/she) knowingly possessed the child pornography knowingly. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See *Knowledge, Instruction 2.3-3.*> The state must prove that the defendant was aware of the nature and content of the materials.

### **Element 3 - Number of depictions**

The third element is that the defendant possessed <insert as appropriate according to the allegations and evidence>:<sup>1</sup>

<For first degree any one or a combination of the following:>

- Fifty or more still images of child pornography,
- One or more still images of child pornography that depict the infliction or threatened infliction of serious physical injury.
- Any single moving image with either one child engaging in more than one sexually explicit act or more than one child engaging in one sexually explicit act.
- More than one moving picture, in any format, depicting a single act of sexually explicit conduct by one child.

<For second degree any one or a combination of the following:>

- More than 20, but fewer than 49, still images of child pornography.
- A moving image of 20 or more frames in any format, depicting a single act of sexually explicit conduct by one child.

<For third degree any one or a combination of the following:>

- Fewer than 20 still images of child pornography.
- A moving picture of fewer than 20 frames depicting a single act of sexually explicit conduct by one child.

A "visual depiction" includes undeveloped film and videotape and information of any kind in any form, including computer software, that is capable of conversion into a visual image and includes encrypted data. It does not matter whether the visual depictions are different images or multiple copies of the same image.<sup>2</sup>

### **[Affirmative Defense]<sup>3</sup>**

The statute defining this offense also defines an affirmative defense, which the defendant has raised. <See *Affirmative Defense, Instruction 2.9-1.*>

The defendant claims that (his/her) acts constituted a violation of Possessing or Transmitting Child Pornography by Minor rather than Possessing Child Pornography. That offense, while still a criminal offense, subjects a person to a lesser penalty. The elements of that offense are <refer to Possessing or Transmitting Child Pornography by Minor, Instruction 7.7-6>.

### **Conclusion**

[<If defendant has not raised the affirmative defense:>

In summary, the state must prove beyond a reasonable doubt that 1) the defendant possessed child pornography, 2) (he/she) was aware of the nature and contents of the material, and 3) it consisted of (fifty or more / twenty or more but fewer than fifty / fewer than twenty / one or more) visual depictions [that depict the infliction or threatened infliction of serious physical injury].

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of possessing child pornography in the (first / second / third) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.]

[<If defendant has raised the affirmative defense:>

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of possessing child pornography, you shall then find the defendant not guilty and not consider the defendant's affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved (his/her) defense by a preponderance of the evidence, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.]

---

<sup>1</sup> Public Act No. 14-192, §§ 1-4, amended the child pornography statutes, effective October 1, 2014, to include moving images.

<sup>2</sup> See *State v. Sorabella*, 277 Conn. 155, 204-206, cert. denied, 549 U.S. 821, 127 S.Ct. 131, 166 L.Ed.2d 36 (2006).

<sup>3</sup> Public Act No. 10-191, §§ 2, 3, and 4 added the affirmative defense, effective October 1, 2010.

## 7.7-5 Affirmative Defenses to Child Pornography Possession -- § 53a-196g

Revised to November 6, 2014

The state has the burden of proving beyond a reasonable doubt that the defendant committed the crime of possessing child pornography in the (first / second / third) degree. If you are satisfied that the state has proved the elements of this crime beyond a reasonable doubt, you must consider whether the defendant has proved by a preponderance of the evidence (his/her) affirmative defense to that crime.

*<Insert Affirmative Defense, Instruction 2.9-1.>*

### **A. Affirmative defense under § 53a-196g (1):**

The defendant must prove by a preponderance of the evidence the following elements:

#### **Element 1- Number of visual depictions**

The first element of the defense is that the defendant possessed fewer than three visual depictions of child pornography, other than a series of images in electronic, digital or other format, which is intended to be displayed continuously, or a film or videotape.<sup>1</sup>

#### **Element 2 - Unknowingly possessed**

The second element is that the defendant did not knowingly purchase, procure, solicit or request such visual depictions or knowingly take any other action to cause such visual depictions to come into (his/her) possession.

#### **Element 3 - Reasonable steps to destroy**

The third element is that the defendant promptly and in good faith took reasonable steps to destroy each such visual depiction without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof, or reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

#### **Conclusion**

*<Substitute for the concluding paragraph in the offense instruction.>* If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of possession of child pornography, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

**B. Affirmative defense under § 53a-196g (2):**

The defendant must prove by a preponderance of the evidence that (he/she) possessed a visual depiction of a nude person under sixteen years of age for a bona fide artistic, medical, scientific, educational, religious, governmental or judicial purpose. *<Describe the defendant's claims.>*

**Conclusion**

*<Substitute for the concluding paragraph in the offense instruction.>* If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of possession of child pornography, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

---

<sup>1</sup> Public Act No. 14-192, §§ 1-4, amended the child pornography statutes, effective October 1, 2014, to include moving images. Section 4 of that act excluded moving images from the affirmative defense.

## 7.7-6 Possessing or Transmitting Child Pornography by Minor -- § 53a-196h

Revised to November 6, 2014

**Note:** This statute penalizes both parties to what is commonly called "sexting," the person sending the image and the person receiving, and retaining, the image.

### A. Possessing, § 53a-196h (a) (1)

The defendant is charged [in count \_\_\_] with possessing child pornography by a minor. The statute defining this offense reads in pertinent part as follows:

No person who is thirteen years of age or older but under eighteen years of age may knowingly possess any visual depiction of child pornography that the subject of such visual depiction knowingly and voluntarily transmitted by means of an electronic communication device to such person and in which the subject of such visual depiction is a person thirteen years of age or older but under sixteen years of age.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

#### **Element 1 - Age of defendant**

The first element is that the defendant is thirteen years of age or older but under eighteen years of age.

#### **Element 2 - Possession**

The second element is that the defendant knowingly possessed a visual depiction of child pornography. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See *Knowledge, Instruction 2.3-3.*> The state must prove that the defendant was aware of the nature and content of the materials.

"Child pornography" is any visual depiction, including any photograph, film, videotape, picture or computer-generated image or picture, whether made or produced by electronic, digital, mechanical or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a person under sixteen years of age engaging in sexually explicit conduct, provided whether the subject of a visual depiction was a person under sixteen years of age at the time the visual depiction was created is a question to be decided by the trier of fact.

A "visual depiction" includes undeveloped film and videotape and information of any kind in any form, including computer software, that is capable of conversion into a visual image and includes encrypted data.

#### **Element 3 - Age of subject**

The third element is that the subject of the visual depiction was at least thirteen years of age but under sixteen years of age.

**Element 4 - Transmission of image to defendant**

The fourth element is that the individual who is the subject of the visual depiction knowingly and voluntarily transmitted the image to the defendant by means of an electronic communication device. An "electronic communication device" is any electronic device that is capable of transmitting a visual depiction, including, but not limited to, a computer, computer network and computer system, and a cellular or wireless telephone.

I earlier defined "knowingly" for you. An act is done knowingly if done voluntarily and purposely, and not because of mistake, inadvertence or accident. <See *Knowledge*, Instruction 2.3-3.>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was at least thirteen years of age but less than eighteen, 2) (he/she) knowingly possessed a visual depiction of child pornography, 3) the subject of the visual depiction was at least thirteen years of age but less than sixteen, and 4) the subject of the visual depiction knowingly and voluntarily transmitted the image to the defendant by means of an electronic communication device.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of possessing child pornography by a minor, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

**B. Transmitting, § 53a-196h (a) (2)**

The defendant is charged [in count \_\_\_] with transmitting child pornography by a minor. The statute defining this offense reads in pertinent part as follows:

No person who is thirteen years of age or older but under sixteen years of age may knowingly and voluntarily transmit by means of an electronic communication device a visual depiction of child pornography in which such person is the subject of such visual depiction to another person who is thirteen years of age or older but under eighteen years of age.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

**Element 1 - Age of defendant**

The first element is that the defendant is thirteen years of age or older but under sixteen years of age.

**Element 2 - Transmission**

The second element is that the defendant knowingly and voluntarily transmitted a visual depiction of child pornography of which (he/she) was the subject to another person by means of an electronic communications device. An "electronic communication device" is any electronic

device that is capable of transmitting a visual depiction, including, but not limited to, a computer, computer network and computer system, and a cellular or wireless telephone.

A person acts "knowingly" with respect to conduct or to a circumstance described by a statute defining an offense when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. An act is done knowingly if done voluntarily and purposely, and not because of mistake, inadvertence or accident. <See *Knowledge*, Instruction 2.3-3.>

"Child pornography" is any visual depiction, including any photograph, film, videotape, picture or computer-generated image or picture, whether made or produced by electronic, digital, mechanical or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a person under sixteen years of age engaging in sexually explicit conduct, provided whether the subject of a visual depiction was a person under sixteen years of age at the time the visual depiction was created is a question to be decided by the trier of fact.

A "visual depiction" includes undeveloped film and videotape and information of any kind in any form, including computer software, that is capable of conversion into a visual image and includes encrypted data.

### **Element 3 - Age of the other person**

The third element is that the person to whom the image was transmitted was at least thirteen years of age but under eighteen years of age.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was at least thirteen years of age but less than sixteen, 2) (he/she) knowingly transmitted a visual depiction of child pornography in which (he/she) was the subject to another person, and 3) the other person was at least thirteen years of age but less than sixteen.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of transmitting child pornography by a minor, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **7.8 SEX OFFENDER REGISTRATION**

### **7.8-1 Failure to Comply with Sex Offender Registration Requirements -- § 54-251 (e), § 54-252 (d), § 54-253 (e), and § 54-254 (b)**

## 7.8-1 Failure to Comply with Sex Offender Registration Requirements -- § 54-251 (e), § 54-252 (d), § 54-253 (e), and § 54-254 (b)

Revised November 6, 2014

The defendant is charged [in count \_\_\_] with failure to comply with sex offender registration requirements. The law requires that persons who are convicted or found not guilty by reason of mental disease or defect of certain sex offenses and who are released into the community must register (his/her) name, identifying factors, criminal history record, residence address and electronic mail address, instant message address or other similar Internet communication identifier, if any, with the commissioner of emergency services and public protection. (He/She) must notify the commissioner without undue delay of any change in (his/her) status whenever the person *<insert as appropriate:>*

- changes (his/her) name,
- changes (his/her) residence<sup>1</sup> address,
- changes or establishes (his/her) electronic mail address, instant message address or other similar Internet communication identifier,
- is employed at, carries on a vocation at or is a student at a trade or professional institution or institution of higher learning in this state,
- is employed in another state,
- carries on a vocation in another state,
- is a student in another state,

In addition, (he/she) must complete and return forms mailed to (him/her) to verify (his/her) address and must submit to the retaking of a photographic image upon the request of the commissioner.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Convicted of certain crime**

The first element is that the defendant was convicted of *<insert crime>*. The state alleges that the defendant was convicted of *<insert crime>* on *<insert date>*.

### **Element 2 - Required to register**

The second element is that the defendant was required to register with the department of emergency services and public protection as a sex offender. I instruct you as a matter of law that a person convicted of *<insert crime>* and released into the community is required to register as a sex offender.

### **Element 3 - Released into the community**

The third element is that the defendant was released into the community. The state alleges that the defendant was released on *<insert date>*.

#### **Element 4 - Failed to comply with registration requirements**

The fourth element is that after being released to the community the defendant failed to comply with the registration requirements. The state alleges that the defendant failed to <insert specific allegations>.

[<If the violation is failing to report a change in circumstances:> The defendant claims that (he/she) satisfied the timing requirements in that the <describe the nature of the change> occurred on <date> and he reported to the registry on <date>. A registrant must report a change within 5 business days of the change. Business days are those days when the registry is open.]<sup>2</sup>

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) was convicted of <insert crime>, 2) was required to register as a sex offender, 3) was released into the community, and 4) did not comply with the registration requirements.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of failure to comply with sex offender registration requirements, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> "Residence" means where a person lives for some time, but does not mean a temporary stay. For a thorough discussion of the meaning of "residence," including travelling and homelessness, see *State v. Drupals*, 306 Conn. 149, 161-65 (2012); see also *State v. Winer*, 112 Conn. App. 458, 465, cert. denied, 292 Conn. 903 (2009) (homelessness does not relieve a defendant of the duty to register).

<sup>2</sup> A registrant is expected to report a change of circumstances on the next business day, but criminal penalties do not apply unless the registrant fails to notify the registry within five business days of the obligation to do so. "The use of the phrase 'undue delay' indicates that the legislature 'intended to make allowance for the vagaries of individual conditions.'" *State v. Drupals*, 306 Conn. 149, 166-71 (2012).

#### **Commentary**

Failure to register as a sex offender is a strict liability crime. *State v. T.R.D.*, 286 Conn. 191, 223-24 (2008).

# **PART 8: CRIMES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE**

**8.1 DRUGS**

**8.2 WEAPONS**

**8.3 MOTOR VEHICLES**

**8.4 BREACH OF PEACE AND DISORDERLY CONDUCT**

**8.5 FALSELY REPORTING AN INCIDENT**

**8.6 RIOT**

**8.7 TERRORISM**

**8.8 RACKETEERING**

**8.9 MISCELLANEOUS PUBLIC SAFETY OFFENSES**

## **8.1 DRUGS**

### **8.1 Introduction to Drug Offenses**

#### *Distribution*

**8.1-1 Sale or Possession with Intent to Sell a Controlled Substance -- § 21a-277 (a) and (b)**

**8.1-2 Sale or Possession with Intent to Sell a Controlled Substance by a Non-Drug-Dependent Person -- § 21a-278 (a) and (b)**

**8.1-3 Illegal Distribution of a Controlled Substance to a Minor -- § 21a-278a (a)**

**8.1-4 Affirmative Defense of Drug Dependency**

**8.1-5 Illegal Distribution of a Controlled Substance near School, Public Housing, or Day Care Center -- § 21a-278a (b)**

**8.1-6 Employment of Minors in the Illegal Distribution of a Controlled Substance -- § 21a-278a (c)**

#### *Possession*

**8.1-7 Illegal Possession -- § 21a-279 (a), (b) and (c)**

*Drug Paraphernalia*

**8.1-8 Possession of Drug Paraphernalia in a Drug Factory Situation -- § 21a-277 (c)**

**8.1-9 Use of or Possession with Intent to Use Drug Paraphernalia -- § 21a-267 (a)**

**8.1-10 Drug Paraphernalia: Delivering -- § 21a-267 (b)**

*Miscellaneous Drug Offenses*

**8.1-11 Obtaining a Controlled Substance by Fraud -- § 21a-266 (a)**

**8.1-12 Misrepresenting Substance as Controlled -- § 21a-268**

**8.1-13 Obtaining Prescription Drugs by Fraud -- § 21a-108 (1)**

**8.1-14 Illegal Sale or Possession of Prescription Drugs -- § 21a-108 (2)**

## 8.1 Introduction to Drug Offenses

Revised to May 23, 2013

### *Drug Transactions*

The statutes in Title 21, Chapter 420b, Dependency-Producing Drugs, define the entire regulatory scheme for controlled substances, encompassing a broad range of prohibited acts from illegal street sales to improper dispensing of such substances by doctors or pharmacists. The statutes criminalizing the distribution of controlled substances (§§ 21a-277, 21a-278a, and 21a-278a) include numerous verbs that describe the variety of transactions that may be punishable. They are:

- manufactures
- distributes
- sells
- prescribes
- dispenses
- compounds
- transports with the intent to sell or dispense
- possesses with the intent to sell or dispense
- offers
- gives
- administers to another person

Note that § 21a-278a incorporates § 21a-277 and § 21a-278 but specifies a limited subset of applicable transactions.

Of these, "administer," "prescribe," and "dispense" are defined in § 21a-240 in a very specialized manner that applies to practitioners, which includes doctors, pharmacists, scientific investigators, etc. See § 21a-240 (43). In *State v. Jackson*, 13 Conn. App. 288, 297 (1988), the information charged the defendant with "possession with the intent to sell or dispense." As the statutory definition of "dispense" makes reference to practitioners, which was not applicable to the defendant, the trial court instructed on the ordinary meaning of the word "dispense." The Appellate Court said that this was improper when there was an applicable statutory definition. These verbs should, therefore, only be used in a case involving a practitioner.

Because the trial court is primarily faced with illegal street sales, the instructions in this section are limited to "sells" and "possesses with the intent to sell."

The definition of "sale" in § 21a-240 (5) encompasses a broad range of transactions. See *State v. Webster*, 308 Conn. 43, 54-55 (2013) (sales includes offers to sell and attempts to transfer narcotics; there is no requirement that a drug transaction be completed before liability may be imposed); *State v. Wassil*, 233 Conn. 174, 193 (1995) (a gift of narcotics comes within the meaning of the statutory definition of sale).

### *Defining the Controlled Substance*

"Controlled substance" is defined as any "drug, substance, or immediate precursor in schedules I to V, inclusive, of the Connecticut controlled substance scheduling regulations adopted pursuant to section 21a-243." There are numerous controlled substances within these schedules. The trial court should ascertain which controlled substance is alleged. If the substance is within such schedules, the court may instruct that if the jury finds it proved that the substance is what it is alleged to be, it is included within the definition of a controlled substance.

*State v. Nieves*, 186 Conn. 26, 31 (1982); *State v. Vessichio*, 197 Conn. 644, 650 (1985), cert. denied, 475 U.S. 1122, 106 S.Ct. 1642, 90 L.Ed.2d 187 (1986); *State v. Kiser*, 43 Conn. App. 339, 359-60, cert. denied, 239 Conn. 945 (1996), cert. denied, 520 U.S. 1190, 117 S.Ct. 1478, 137 L.Ed.2d 690 (1997).

In some cases, the parties may stipulate to the nature of the substance. See Stipulations, Instruction 2.6-9.

There are statutory definitions for the following substances, which the court may incorporate into the instructions as appropriate, depending on the nature of the substances alleged in the information:

- Amphetamine-type substances
- Barbiturate-type drugs
- Cannabis-type substances
- Cocaine in a free-base form
- Hallucinogenic substances
- Marijuana
- Narcotic substance
- Opiate
- Opium poppy
- Other stimulant and depressant drugs
- Poppy straw

In some cases, the quantity of the substance determines the punishment. In these cases the jury will have to make a determination that a certain amount of a given substance was involved. Note that effective July 1, 2011, the possession of less than one-half ounce of a cannabis-type substance is an infraction.

### ***Lesser included offenses***

Distribution of any controlled substance other than marijuana (§ 21a-277) is a lesser included offense of distribution of certain quantities of specified controlled substances (§ 21a-278). *State v. Bradley*, 60 Conn. App. 534, 546, cert. denied, 255 Conn. 921 (2000).

Possession (§ 21a-279) is a lesser included offense of possession with intent to sell (§ 21a-277) as long as the substances are the same. *State v. Johnson*, 137 Conn. App. 733, 753 (2012), rev'd on other grounds, 316 Conn. 34 (2015).

Possession of narcotics (§ 21a-279) and possession of narcotics within 1500 feet of a school (§ 21a-279 (d)) are separate offenses. *State v. Otto*, 50 Conn. App. 1, 20, cert. denied, 247 Conn. 927 (1998). But possession of cocaine under § 21a-279 (a) is a lesser included offense of possession of cocaine with intent to sell under § 21a-278 (b) and possession with intent to sell within 1500 feet of a school under § 21a-279 (d). *State v. Barnes*, 47 Conn. App. 590, 592 (1998).

### ***Multiple offenses***

Possession of two narcotic substances at the same time does not constitute two separate offenses under § 21a-279 (a). *State v. Rawls*, 198 Conn. 111 (1985).

## 8.1-1 Sale or Possession with Intent to Sell a Controlled Substance -- § 21a-277 (a) and (b)

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with the illegal (sale / possession of with intent to sell) of <insert type of substance>.<sup>1</sup> The statute defining this offense imposes penalties on any person who (sells to another person / possesses with the intent to sell to another person)<sup>2</sup> any controlled substance, which includes <insert type of substance>.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt that the defendant knowingly (sold / possessed with the intent to sell) a controlled substance. In this case, it is alleged that the substance was <insert type of substance>. You must first find that the substance was <insert type of substance>.

"Sale" is any form of delivery, which includes barter, exchange or gift, or offer therefor, and each such transaction made by any person whether as principal, proprietor, agent, servant or employee.

[<If possession with intent to sell is alleged:> "Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>3</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the <insert type of substance>. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of <insert type of substance>. <See Knowledge, Instruction 2.3-3.>

<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>

Conviction for possession of <insert type of substance> with the intent to sell requires proof of the specific intent to sell the <insert type of substance>. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

You should consider all of the surrounding circumstances in determining whether the defendant had the intent to sell.<sup>4</sup>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant (sold / possessed with the intent to sell) a controlled substance, specifically <insert type of substance>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of (sale / possession with intent to sell) a controlled substance, then you shall find

the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Subsection (a) prohibits the distribution of "a controlled substance which is a hallucinogenic substance other than marijuana, or a narcotic substance." Subsection (b) prohibits the distribution of "any controlled substance, except a narcotic substance, or a hallucinogenic substance other than marijuana." The difference between the two is in the punishment. Thus, this statute covers the distribution of any controlled substance other than marijuana.

The court should indicate the specific substance(s) according to the allegations of the information. See Defining the Controlled Substance in the Introduction to this section for applicable definitions.

Also, the parties may be willing to stipulate to the nature of the substance. See Stipulations, Instruction 2.6-9.

<sup>2</sup> See Drug Transactions in the Introduction to this section.

<sup>3</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

<sup>4</sup> See *State v. Avila*, 166 Conn. 569, 579-80 (1974) (the possession of a quantity of narcotics far greater than the amount a drug user would usually possess for his or her own use is sufficient to prove the intent to sell); *State v. Brown*, 90 Conn. App. 835, 840, cert. denied, 276 Conn. 901 (2005) (defendant's presence in area known for drug activity, his possession of cash and a cellular phone, and the packaging of the drugs were all indicia of the intent to sell); see also *State v. Brown*, 14 Conn. App. 605, 616-17, cert. denied, 208 Conn. 816 (1988) (evidence of intercepted phone conversations regarding drug sales was sufficient evidence to support a probable cause determination).

### *Commentary*

#### *Subsequent offenders*

General Statutes § 21a-277 (a) and (b) provide for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 21a-277. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## 8.1-2 Sale or Possession with Intent to Sell a Controlled Substance by a Non-Drug-Dependent Person -- § 21a-278 (a) and (b)

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with the illegal (sale / possession with intent to sell) of *<insert type of substance>*<sup>1</sup> by a non-drug-dependent person.<sup>2</sup> The statute defining this offense imposes penalties on any person who (sells to another person / possesses with the intent to sell to another person)<sup>3</sup> any controlled substance, which includes *<insert type of substance>*.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt that the defendant knowingly (sold / possessed with the intent to sell) *<insert type of substance>*. You must first find that the substance was *<insert type of substance>*.

[*<If a specific quantity of heroin, methadone or cocaine is alleged:>* The state must prove beyond a reasonable doubt that *<insert as appropriate:>*

- the (preparation / compound / mixture / substance) contains an aggregate weight of one ounce or more of (heroin / methadone).
- the (preparation / compound / mixture / substance) contains an aggregate weight of one-half ounce or more of cocaine or cocaine in a free-base form.
- the substance contains five milligrams or more of lysergic acid diethylamide.

The term "aggregate weight" means the entire weight of the (preparation / compound / mixture / substance) that is alleged to contain the (heroin / methadone / cocaine / cocaine in a free-base form / lysergic acid diethylamide). The illegal substance may be less than ten percent pure (heroin / methadone / cocaine / cocaine in a free-base form / lysergic acid diethylamide), the balance being sugar, milk, quinine, mannite or the like. In other words, you must consider the weight of the entire substance, including the alleged illegal drug in combination with any other substance it may contain, in determining whether the substance is (one ounce / one-half ounce / five milligrams) or more.]

[*<If the alleged substance is one kilogram or more of a cannabis-type substance:>* The state must prove beyond a reasonable doubt that the defendant (sold / possessed with the intent to sell) at least one kilogram of a cannabis-type substance.]

"Sale" is any form of delivery, which includes barter, exchange or gift, or offer therefor, and each such transaction made by any person whether as principal, proprietor, agent, servant or employee.

[*<If possession with intent to sell is alleged:>* "Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>4</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the *<insert type of substance>*. That is, that (he/she) was aware that (he/she) was in possession of it and

was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of *<insert type of substance>*. *<See Knowledge, Instruction 2.3-3.>*

*<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>*

Conviction for possession of a *<insert type of substance>* with the intent to sell requires proof of the specific intent to sell the *<insert type of substance>*. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

You should consider all of the surrounding circumstances in determining whether the defendant had the intent to sell.<sup>5]</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant (sold / possessed with the intent to sell) *<insert type of substance>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the (sale / possession with intent to sell) *<insert type of substance>*, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Subsection (a) imposes a higher punishment for larger quantities of certain substances, specifically one or more preparations, compounds, mixtures or substances containing either an aggregate weight of one ounce or more of heroin or methadone or an aggregate weight of one-half ounce or more of cocaine or cocaine in a free-base form, or a substance containing five milligrams or more of lysergic acid diethylamide. The jury must determine that if the substance is heroine, methadone, cocaine, or lysergic acid diethylamide, that it is at least the specified quantity. Subsection (b) imposes a lesser punishment for an undetermined quantity of any narcotic substance, hallucinogenic substance other than marijuana, or amphetamine-type substance, and for a quantity of a cannabis-type substance of one kilogram or more. If the quantity is unspecified, then the jury need only determine that the substance is what it is alleged to be, and the lower penalties of subsection (b) will apply.

The court should indicate the specific substance(s) according to the allegations of the information. See Defining the Controlled Substance in the Introduction to this section for applicable definitions. The parties may be willing to stipulate to the nature of the substance. See Stipulations, Instruction 2.6-9.

<sup>2</sup> Non-drug-dependency is not an element of the crime. See Affirmative Defense of Drug Dependency, Instruction 8.1-4.

<sup>3</sup> See Drug Transactions in the Introduction to this section.

<sup>4</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

<sup>5</sup> See *State v. Avila*, 166 Conn. 569, 579-80 (1974) (the possession of a quantity of narcotics far greater than the amount a drug user would usually possess for his or her own use is sufficient to prove the intent to sell.); *State v. Brown*, 90 Conn. App. 835, 840, cert. denied, 276 Conn. 901 (2005) (defendant's presence in area known for drug activity, his possession of cash and a cellular phone, and the packaging of the drugs were all indicia of the intent to sell); see also *State v. Brown*, 14 Conn. App. 605, 616-17, cert. denied, 208 Conn. 816 (1988) (evidence of intercepted phone conversations regarding drug sales was sufficient evidence to support a probable cause determination).

### *Commentary*

#### *Subsequent offenders*

General Statutes § 21a-278 (b) provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 21a-278 (b). Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## 8.1-3 Illegal Distribution of a Controlled Substance to a Minor -- § 21a-278a (a)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the illegal distribution of a controlled substance to a minor. The statute defining this offense imposes penalties on any person eighteen years of age or older who is not, at the time, a drug-dependent person,<sup>1</sup> and who (distributes / sells / offers / gives)<sup>2</sup> any controlled substance to another person who is under eighteen years of age and is at least two years younger than the defendant.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Distributed a controlled substance

The first element is that the defendant (distributed / sold / offered / gave) a controlled substance, specifically *<insert specific substance>*,<sup>3</sup> to another person.

### Element 2 - Age of defendant

The second element is that the defendant was eighteen years of age or older at the time of the alleged offense.

### Element 3 - Age of other person

The third element is that at the time of the alleged offense the person to whom the *<insert specific substance>* was (distributed / sold / offered / given) was under eighteen years of age and at least two years younger than the defendant.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (distributed / sold / offered / gave) *<insert type of substance>*, 2) the defendant was at least 18 years of age at the time, and 3) the person to whom the *<insert type of substance>* was (distributed / sold / offered / given) to was under the age of 18 and at least 2 years younger than the defendant.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the distribution of a controlled substance, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Non-drug-dependency is not an element of the crime. See Affirmative Defense of Drug Dependency, Instruction 8.1-4.

<sup>2</sup> See Drug Transactions in the Introduction to this section.

<sup>3</sup> See Defining the Controlled Substance in the Introduction to this section.

## 8.1-4 Affirmative Defense of Drug Dependency

Revised to December 1, 2007 (modified April 23, 2010)

**Note: This affirmative defense is available when the defendant is charged under § 21a-278, Instruction 8.1-2, or § 21a-278a (a), Instruction 8.1-3.**

The statute allows the defendant to raise the affirmative defense that (he/she) is drug-dependent.

*<Insert Affirmative Defense, Instruction 2.9-1.>*

A "drug-dependent person" is defined by law as "a person who has a psychoactive substance dependence on drugs as that condition is defined in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association." "Drug dependence" is defined by law to be "a psychoactive substance dependence on drugs as that condition is defined in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association." It is the current standard that must be applied in determining the question of drug dependency.

*<Insert the current criteria from the most recent edition of the DSM.>*

*<Substitute for the conclusion in the offense instruction:>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that *<summarize elements of offense.>*

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of *<insert name of offense>*, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved by a preponderance of the evidence that (he/she) was drug-dependent at the time of the offense, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved by a preponderance of the evidence that (he/she) was drug-dependent at the time of the offense, then you shall find the defendant guilty.

### **Commentary**

"[A] person charged with sale of narcotics pursuant to § 21a-278 (b) is presumed not to have been drug-dependent, but may avoid liability under § 21a-278 (b) by proving by a preponderance of the evidence that he was drug-dependent at the time of the offense." *State v. Jenkins*, 41 Conn. App. 604, 609 (1996); see also *State v. Hart*, 221 Conn. 595, 607-11 (1992). A defendant is entitled to an instruction on this defense whenever there is any foundation in the evidence. *State v. Holloway*, 117 Conn. App. 798, 804-807 (2009), cert. denied, 297 Conn. 925 (2010) (court improperly removed the determination of drug dependency from the jury on the basis that the evidence was anecdotal rather than from an expert).

The trial court must instruct the jury on the statutory definition of drug dependency. *State v. Cotton*, 69 Conn. App. 505 (2002); *State v. Marrero*, 66 Conn. App. 709, 724 (2001). See also *State v. Ray*, 290 Conn. 602, 626-34 (2009) (recent history of drug dependency sufficient to prove drug dependency at the time of the offense); *State v. Stewart*, 77 Conn. App. 393, cert. denied, 265 Conn. 906 (2003) (discussing evidence of drug dependency).

A defendant may be charged under both § 21a-277 and § 21a-278; the court should clarify that the defense of drug dependency applies only to the charges under § 21a-278. *State v. Little*, 54 Conn. App. 580, 583 (1999).

## 8.1-5 Illegal Distribution of a Controlled Substance near School, Public Housing, or Day Care Center -- § 21a-278a (b)

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with the illegal distribution of a controlled substance near a (school / public housing project / licensed child day care center). The statute defining this offense imposes punishment on any person who (sells / possesses with the intent to sell)<sup>1</sup> to another person any controlled substance in or on, or within one thousand five hundred feet of the real property comprising (a public or private elementary or secondary school / a public housing project / a licensed child day care center that is identified as a child day care center by a sign posted in a conspicuous place).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sold or possessed with intent to sell a controlled substance**

The first element is that the defendant (sold / possessed with the intent to sell) to another person a controlled substance, specifically *<insert type of substance>*.<sup>2</sup>

"Sale" is any form of delivery, which includes barter, exchange or gift, or offer therefor, and each such transaction made by any person whether as principal, proprietor, agent, servant or employee.

[*<If possession with intent to sell is alleged:>* "Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>3</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the *<insert type of substance>*. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of *<insert type of substance>*. *<See Knowledge, Instruction 2.3-3.>*

*<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>*

Conviction for possession of a *<insert type of substance>* with the intent to sell requires proof of the specific intent to sell the *<insert type of substance>*. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

You should consider all of the surrounding circumstances in determining whether the defendant had the intent to sell.<sup>4</sup>

### **Element 2 - Within 1500 feet**

The second element is that the defendant (sold / intended to sell) the *<insert type of substance>* in or on, or within 1500 feet of the real property of *<insert as appropriate:>*

- a (public / private) (elementary / secondary) school.
- a public housing project.
- a licensed child day care center that is identified as a child day care center by a sign posted in a conspicuous place.

*<Insert appropriate definition(s):>*

- An elementary school is a school for any combination of grades below grade seven. A secondary school is a school for any combination of grades seven through twelve, and may also include any separate combination of grades five and six or grade six with grades seven and eight.<sup>5</sup>
- A public housing project means dwelling accommodations operated as a state or federally subsidized multifamily housing project by a housing authority, nonprofit corporation or municipal developer.<sup>6</sup>
- A child day care center means a center that offers or provides a program of supplementary care to more than twelve related or unrelated children outside their own homes on a regular basis.<sup>7</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (sold / possessed with the intent to sell) *<insert type of substance>*, and 2) that the defendant (sold / intended to sell) the *<insert type of substance>* in or on, or within 1500 feet of the real property of *<insert type of property>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the illegal distribution of a controlled substance near (a school / public housing / a day care center), then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See Drug Transactions in the Introduction to this section.

<sup>2</sup> See Defining the Controlled Substance in the Introduction to this section.

<sup>3</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

<sup>4</sup> See *State v. Avila*, 166 Conn. 569, 579-80 (1974) (the possession of a quantity of narcotics far greater than the amount a drug user would usually possess for his or her own use is sufficient to prove the intent to sell); *State v. Brown*, 90 Conn. App. 835, 840, cert. denied, 276 Conn. 901 (2005) (defendant's presence in area known for drug activity, his possession of cash and a cellular phone, and the packaging of the drugs were all indicia of the intent to sell); see also *State v. Brown*, 14 Conn. App. 605, 616-17, cert. denied, 208 Conn. 816 (1988) (evidence of

intercepted phone conversations regarding drug sales was sufficient evidence to support a probable cause determination).

<sup>5</sup> See General Statutes § 10-282.

<sup>6</sup> See General Statutes § 21a-278a (b).

<sup>7</sup> See General Statutes § 19a-77 (a) (1).

#### ***Commentary***

"[T]he plain language of § 21a-278a (b) dictates only one construction. While 'knowledge' on the part of the defendant as to location is not an element of § 21a-278a (b), the state is required to prove that the defendant intended to sell or dispense those drugs in his or her possession at a specific location, which location happens to be within 1000 [now 1500] feet of an elementary or secondary school." *State v. Denby*, 235 Conn. 477, 483 (1995); see also *State v. Vasquez*, 66 Conn. App. 118, 129, cert. denied, 258 Conn. 941 (2001); *State v. Knight*, 56 Conn. App. 845, 850-51 (2000). The intent to sell in a proscribed area cannot be inferred merely from possession in that area. *State v. Lewis*, 303 Conn. 760, 772-73 (2012).

Section 21a-278a (b) creates a separate crime from § 21a-278 (b). *State v. Player*, 58 Conn. App. 592, 596-98 (2000) (rejecting defendant's claim that it was a sentence enhancement); but see *State v. Polanco*, 301 Conn. 716, 721 n.3 (2011) (questioning the validity of *Player's* conclusion).

## 8.1-6 Employment of Minors in the Illegal Distribution of a Controlled Substance -- § 21a-278a

(c)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the employment of a minor in the illegal distribution of a controlled substance. The statute defining this offense imposes punishment on any person who (employs / hires / uses / persuades / induces / entices / coerces) a person under eighteen years of age in the illegal distribution<sup>1</sup> of a controlled substance.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Used a person under 18 years old**

The first element is that the defendant (employed / hired / used / persuaded / induced / enticed / coerced) a person under eighteen years of age.

### **Element 2 - To violate § 21a-277 or § 21a-278**

The second element is that the minor was (employed / hired / used / persuaded / induced / enticed / coerced) to violate the laws against the distribution of controlled substances. The defendant must have actually utilized the minor in the violation of these laws.<sup>2</sup> *<Describe the alleged violation(s) and identify the elements of the crime(s) or refer to the count(s) charging the violation(s).>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (employed / hired / used / persuaded / induced / enticed / coerced) a person under eighteen years of age, and 2) (he/she) did so to violate the laws against the distribution of controlled substances.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of employing a minor in the illegal distribution of a controlled substance, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The statute specifies that the minor is employed "to violate section 21a-277 or 21a-278." Tailor this instruction to the allegations of the information. See Drug Transactions in the Introduction to this section.

<sup>2</sup> See *State v. Harris*, 32 Conn. App. 831, 845 n.9 (1993), appeal dismissed, 230 Conn. 347 (1994).

*Commentary*

Being an accessory to the sale of narcotics is not the same thing as using a minor in the sale of narcotics. *State v. Harris*, supra, 32 Conn. App. 840-41 (§ 21a -278a (c)) is violated when a defendant "employs, hires, uses, persuades, induces, entices or coerces," whereas § 53a-8 is violated when a defendant "solicits, requests, commands, importunes or intentionally aids").

## 8.1-7 Illegal Possession -- § 21a-279

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with the possession of a controlled substance, specifically *<insert type of substance>*.<sup>1</sup> The statute defining this offense imposes penalties on any person who possesses any controlled substance, except as authorized. *<Insert type of substance>* is a controlled substance.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt that the defendant knowingly possessed or had under (his/her) control *<insert type of substance.>*

You must first find that the substance was *<insert type of substance>*. [*<If substance is marijuana:>* You must also determine whether the amount allegedly possessed by the defendant was (more than one-half ounce but less than four ounces / four ounces or more).] *<Summarize the evidence presented as to the nature and quantity of the substance.>*

[*<Insert if applicable:>* The defendant does not claim that he was authorized to possess a narcotic substance as a person having a special privilege or a license under the statute.]

"Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>2</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the *<insert type of substance>*. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of *<insert type of substance>*. *<See Knowledge, Instruction 2.3-3.>*

*<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>*

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant knowingly possessed *<insert type of substance>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of possession of *<insert type of substance>*, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The court should indicate the specific substance(s) according to the allegations of the information. See Defining the Controlled Substance in the Introduction to this section for applicable definitions.

<sup>2</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

### ***Commentary***

Effective July 1, 2011, the possession of less than one-half ounce of a cannabis-type substance is an infraction.

### ***Subsequent offenders***

Effective October 1, 2015, the statute was modified to a single offense of possession of a controlled substance with a single punishment, a class A misdemeanor, rather than distinguishing between narcotic substances, hallucinogenic substances, cannabis-type substances, and controlled substances with different punishment schemes for each type of substance. For subsequent offenses, the court may find the person to be a persistent offender for possession of a controlled substance under the newly defined § 53a-40 (f). See Persistent Offenders, Instruction 2.12-1.

### ***Sentence Enhancer***

Section 21a-279 (b) provides an enhanced penalty if the violation occurs in, on or within 1500 feet of a school and the defendant is not a student at the school, or within 1500 feet of a day care center. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 8.1-8 Possession of Drug Paraphernalia in a Drug Factory Situation -- § 21a-277 (c)

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with possessing drug paraphernalia in a drug factory situation. The statute defining this offense reads in pertinent part, as follows:

no person shall knowingly possess drug paraphernalia in a drug factory situation for the unlawful mixing, compounding or otherwise preparing any controlled substance.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Knowingly possessed drug paraphernalia**

The first element is that the defendant knowingly possessed drug paraphernalia. "Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>1</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the drug paraphernalia. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the drug paraphernalia. <See Knowledge, Instruction 2.3-3.>

<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>

<Insert appropriate portions of the definition of Drug Paraphernalia in the glossary that apply to the allegations.>

### **Element 2 - Drug factory**

The second element is that the defendant possessed the drug paraphernalia in a drug factory situation. "Drug Factory" means any place used for the manufacturing, mixing, compounding, refining, processing, packaging, distributing, storing, keeping, holding, administering or assembling illegal substances contrary to the provisions of this chapter, or any building, room or location which contains equipment or paraphernalia used for this purpose.

### **Element 3 - For preparation of controlled substance**

The third element is that the defendant possessed drug paraphernalia for the knowingly unlawful mixing, compounding or otherwise preparing of any controlled substance. The state must prove that the defendant's purpose in possessing the drug paraphernalia was to prepare a controlled substance. The state alleges that the drug paraphernalia was for <insert specific allegations>.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant knowingly possessed drug paraphernalia, 2) it was in a drug factory situation, and 3) it was for the purpose of preparing a controlled substance.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the possession of drug paraphernalia in a drug factory situation, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

### *Commentary*

#### *Subsequent offenders*

General Statutes § 21a-277 (a) and (b) provide for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 21a-277. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## 8.1-9 Use of or Possession with Intent to Use Drug Paraphernalia -- § 21a-267 (a)

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with (using / possessing with intent to use) drug paraphernalia. The statute defining this offense reads in pertinent part as follows:

no person shall (use / possess with intent to use) drug paraphernalia to *<insert one or more of the following:>*

- (plant / propagate / cultivate / grow / harvest / manufacture / compound / convert / produce / process / prepare / test / analyze / pack / repack / store / contain / conceal) any controlled substance, other than less than one-half ounce of a cannabis-type substance.
- (ingest / inhale / introduce) into the human body any controlled substance, other than less than one-half ounce of a cannabis-type substance.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt that the defendant (used / possessed with intent to use) drug paraphernalia. *<Insert appropriate portions of the definition of Drug Paraphernalia in the glossary that apply to the allegations.>*

The drug paraphernalia must have been used to *<insert as appropriate:>*

- (plant / propagate / cultivate / grow / harvest / manufacture / compound / convert / produce / process / prepare / test / analyze / pack / repack / store / contain / conceal) any controlled substance, other than less than one-half ounce of a cannabis-type substance.
- (ingest / inhale / introduce) into the human body any controlled substance, other than less than one-half ounce of a cannabis-type substance.

[*<If possession with the intent to use is alleged:>* "Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>1</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the drug paraphernalia. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the drug paraphernalia. *<See Knowledge, Instruction 2.3-3.>*

*<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>*

The defendant must have specifically intended that the *<identify specific drug paraphernalia>* was to be used for *<insert specific allegations regarding use>*. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant (used / possessed with the intent to use) drug paraphernalia to *<insert specific allegations regarding use>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the (use of / possession of with the intent to use) drug paraphernalia, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

***Commentary***

Effective July 1, 2011, the possession of less than one-half ounce of a cannabis-type substance is an infraction.

***Sentence Enhancer***

Section 21a-267 (c) provides an enhanced penalty if the violation occurs in, on or within 1500 feet of a school and the defendant is not a student at the school. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 8.1-10 Drug Paraphernalia: Delivering -- § 21a-267 (b)

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with (delivering / possessing with intent to deliver / manufacturing with intent to deliver) drug paraphernalia. The statute defining this offense reads in pertinent part as follows:

no person shall (deliver / possess with intent to deliver / manufacture with intent to deliver) drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to <insert one or more of the following:>

- (plant / propagate / cultivate / grow / harvest / manufacture / compound / convert / produce / process / prepare / test / analyze / pack / repack / store / contain / conceal) any controlled substance, other than less than one-half ounce of a cannabis-type substance.
- (inject / ingest / inhale / introduce) into the human body any controlled substance, other than less than one-half ounce of a cannabis-type substance.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Delivered/Possessed/Manufactured objects**

The first element is that the defendant (delivered / possessed with the intent to deliver / manufactured with the intent to deliver) the object[s] alleged to be drug paraphernalia.

"Deliver" means the actual, constructive or attempted transfer from one person to another of drug paraphernalia, whether or not there is an agency relationship.

[<If possession is alleged:> "Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>1</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the drug paraphernalia. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the drug paraphernalia. <See Knowledge, Instruction 2.3-3.>

<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>]

[<If manufacturing is alleged:> "Manufacturing" has its ordinary meaning.]

[<If intent to deliver is alleged:> Conviction for (possession / manufacturing) of drug paraphernalia with the intent to deliver requires proof of the specific intent to deliver the drug paraphernalia. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

You should consider all of the surrounding circumstances in determining whether the defendant had the intent to deliver.]

### **Element 2 - Drug paraphernalia**

The second element is that the object(s) (was/were) drug paraphernalia.

*<Insert appropriate portions of the definition of Drug Paraphernalia from the glossary that apply to the allegations.>*

### **Element 3 - Knowledge of subsequent use**

The third element is that the defendant (delivered / possessed with intent to deliver / manufactured with intent to deliver) the object(s) knowing, or under circumstances where one reasonably should know, that (it/they) would be used to *<insert allegations regarding use>* a controlled substance. The state alleges that the drug paraphernalia was for *<insert specific allegations regarding use>*.

A person acts "knowingly" with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists. *<See Knowledge, Instruction 2.3-3.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (delivered / possessed with the intent to deliver / manufactured with the intent to deliver) object(s) alleged to be drug paraphernalia, 2) the objects were, in fact, drug paraphernalia, and 3) (he/she) knew or had reason to know that such paraphernalia would be used to *<insert specific allegations>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the (delivery / possession with the intent to deliver / manufacture with the intent to deliver) drug paraphernalia, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

### ***Commentary***

Effective July 1, 2011, the possession of less than one-half ounce of a cannabis-type substance is an infraction.

### ***Sentence Enhancer***

Section 21a-267 (c) provides an enhanced penalty if the violation occurs in, on or within 1500 feet of a school and the defendant is not a student at the school. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 8.1-11 Obtaining a Controlled Substance by Fraud -- § 21a-266 (a)

Revised to April 23, 2010

**Note:** This statute contains several other subsections, some of which are specific ways of violating subsection (a), and some of which apply to the regulatory scheme applicable to practitioners, such as medical doctors and pharmacists. Inquire of the state which subsection is being relied on and tailor the instruction accordingly.

The defendant is charged [in count \_\_\_] with obtaining a controlled substance by fraud. The statute defining this offense reads in pertinent part as follows:

no person shall (obtain or attempt to obtain / procure or attempt to procure the administration of) a controlled substance <insert appropriate subsection:>

- § 21a-266 (a) (1): by fraud, deceit, misrepresentation or subterfuge.
- § 21a-266 (a) (2): by the forgery or alteration of a prescription or of any written order.
- § 21a-266 (a) (3): by the concealment of a material fact.
- § 21a-266 (a) (4): by the use of a false name or the giving of a false address.

For you to find the defendant guilty of this offense, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Obtained or procured controlled substance**

The first element is that the defendant (obtained or attempted to obtain / procured or attempted to procure the administration of) a controlled substance, specifically <insert type of substance>.<sup>1</sup> Obtain and procure have their ordinary meanings. Attempt has its ordinary meaning.

[<Insert if applicable:> "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by: (A) A practitioner, or, in (his/her) presence, by (his/her) authorized agent, or (B) the patient or research subject at the direction and in the presence of the practitioner, or (C) a nurse or intern under the direction and supervision of a practitioner.]

### **Element 2 - Means**

The second element is that the defendant did so <insert as appropriate:>

- § 21a-266 (a) (1): (1) by fraud, deceit, misrepresentation, or subterfuge. Fraud consists of some deceitful practice, or wilful device, resorted to with intent to deprive another of (his/her) right, or in some manner to do (him/her) an injury. <See Intent to Defraud, Instruction 2.3-6.> Deceit, misrepresentation and subterfuge have their ordinary meaning.
- § 21a-266 (a) (2): by forgery or alteration of a prescription or of any written order. Forgery means falsely making, completing, or altering a written instrument with intent to defraud, deceive or injure another.<sup>2</sup> "Prescription" means a written, oral or electronic order for any controlled substance or preparation from a licensed practitioner to a pharmacist for a patient.

- **§ 21a-266 (a) (3):** by the concealment of a material fact. As applicable here, a material fact means a fact that if known would have affected the defendant's ability to lawfully receive a controlled substance or its administration.
- **§ 21a-266 (a) (4):** by the use of a false name or the giving of a false address. False means not true.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (obtained or attempted to obtain / procured or attempted to procure the administration of) a controlled substance, and 2) did so through *<insert specific allegations>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of obtaining a controlled substance by fraud, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See Defining the Controlled Substance in the Introduction to this section.

<sup>2</sup> Further definitions of these terms are found in General Statutes § 53a-137; see glossary entries for "falsely makes," "falsely completes," and "falsely alters."

## 8.1-12 Misrepresenting Substance as Controlled -- § 21a-268

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with misrepresentation of a substance as a controlled substance. The statute defining this offense imposes punishment on any person who knowingly delivers or attempts to deliver a noncontrolled substance <insert appropriate subsection:>

- § 21a-268 (a) (1): upon the express representation that such substance is a controlled substance.
- § 21a-268 (a) (2): under circumstances which would lead a reasonable person to believe that such substance is a controlled substance.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Delivered or attempted to deliver

The first element is that the defendant knowingly delivered or attempted to deliver a noncontrolled substance. A noncontrolled substance is one that does not fall within the definition of a controlled substance. The state must prove that the defendant knew that the substance in question was not a controlled substance. A person acts "knowingly" with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists. <See Knowledge, Instruction 2.3-3.>

"Deliver or delivery" means the actual, constructive or attempted transfer from one person to another of such substance, whether or not there is an agency relationship. Attempt has its ordinary meaning.

### Element 2 - Misrepresentation

The second element is that the defendant represented through (his/her) words or conduct that the substance was a controlled substance, specifically <insert type of substance>.<sup>1</sup> In other words, the delivery or attempted delivery of the noncontrolled substance was <insert as appropriate:>

- upon the express representation that such substance was <insert type of substance>.
- under circumstances which would lead a reasonable person to believe that such substance was <insert type of substance>.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) knowingly delivered or attempted to deliver a noncontrolled substance, and 2) represented through (his/her) words or conduct that the substance was <insert type of substance>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the misrepresentation of a substance as a controlled substance, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to

prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See Defining the Controlled Substance in the Introduction to this section.

## 8.1-13 Obtaining Prescription Drugs by Fraud -- § 21a-108 (1)

Revised to April 23, 2010

**Note:** This statute has other subsections that are limited to the regulatory scheme applicable to practitioners, such as medical doctors and pharmacists. If the defendant is being charged as a practitioner tailor the instruction accordingly. See also Illegal Sale or Possession of Prescription Drugs, **Instruction 8.1-14**.

The defendant is charged [in count \_\_\_] with obtaining a prescription drug by fraud. The statute defining this offense reads in pertinent part as follows:

no person shall (obtain or attempt to obtain / procure or attempt to procure the administration of) a drug that is required by any applicable federal or state law to be dispensed pursuant only to a prescription or is restricted to use by prescribing practitioners only<sup>1</sup> by *<insert one of the following:>*

- § 21a-108 (1) (a): fraud, deceit, misrepresentation or subterfuge.
- § 21a-108 (1) (b): the forgery or alteration of a prescription or of any written order.
- § 21a-108 (1) (c): the concealment of a material fact.
- § 21a-108 (1) (d): the use of a false statement in any prescription, order or report required by law.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Obtained or procured prescription drug**

The first element is that the defendant (obtained or attempted to obtain / procured or attempted to procure the administration of) a prescription drug, specifically *<insert type of drug>*. Obtain and procure have their ordinary meaning. Attempt has its ordinary meaning.

[*<Insert if applicable:>* "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by: (A) A practitioner, or, in (his/her) presence, by (his/her) authorized agent, or (B) the patient or research subject at the direction and in the presence of the practitioner, or (C) a nurse or intern under the direction and supervision of a practitioner.]

### **Element 2 - Means**

The second element is that the defendant did so by *<insert as appropriate:>*

- § 21a-108 (1) (a): fraud, deceit, misrepresentation, or subterfuge. "Fraud" means a deliberately planned purpose and intent to cheat or deceive or unlawfully deprive someone of some advantage, benefit or property. *<See Intent to Defraud, Instruction 2.3-6.>* Deceit, misrepresentation and subterfuge have their ordinary meaning.
- § 21a-108 (1) (b): forgery or alteration of a prescription or of any written order. Forgery means falsely making, completing, or altering a written instrument with intent to defraud, deceive or injure another.<sup>2</sup>

- **§ 21a-108 (1) (c):** the concealment of a material fact. As applicable here, a material fact means a fact that if known would have affected the defendant's ability to lawfully receive a controlled substance or its administration.
- **§ 21a-108 (1) (d):** the use of a false statement in any prescription, order or report required by law.

[<Insert if applicable:> "Prescription" means a written, oral or electronic for any controlled substance or preparation from a licensed practitioner to a pharmacist for a patient].

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (obtained or attempted to obtain / procured or attempted to procure the administration of) a prescription drug, and 2) did so through <insert specific allegations>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of obtaining a prescription drug by fraud, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See General Statutes § 21a-106 (k) and § 20-571 (14).

<sup>2</sup> Further definitions of these terms are found in General Statutes § 53a-137; see glossary entries for "falsely makes," "falsely completes," and "falsely alters."

## 8.1-14 Illegal Sale or Possession of Prescription Drugs -- § 21a-108 (2)

Revised to November 17, 2015

**Note:** This statute has other subsections that are limited to the regulatory scheme applicable to practitioners, such as medical doctors and pharmacists. If the defendant is being charged as a practitioner tailor the instruction accordingly. See also Obtaining Prescription Drugs by Fraud, **Instruction 8.1-13**.

The defendant is charged [in count \_\_\_] with the illegal (sale / possession) of prescription drugs. The statute defining this offense reads in pertinent part as follows:  
no person shall (sell / possess) any drug covered by said subsection, except as authorized by law.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sold or possessed drug**

The first element is that the defendant (sold / possessed) a drug, specifically *<identify drug>*.  
*<Insert appropriate definition(s):>*

- "Sale" is any form of delivery, which includes barter, exchange or gift, or offer therefor, and each such transaction made by any person whether as principal, proprietor, agent, servant or employee.
- "Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>1</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the *<insert type of substance>*. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of *<insert type of substance>*. *<See Knowledge, Instruction 2.3-3.>*

*<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>*<sup>1</sup>

### **Element 2 - Prescription drug**

The second element is that the drug is required by state and federal law to be dispensed pursuant only to a prescription or is restricted to use by prescribing practitioners only.<sup>2</sup> "Prescription" means a written, oral or electronic for any controlled substance or preparation from a licensed practitioner to a pharmacist for a patient.

**Element 3 - Not authorized**

The third element is that such conduct of the defendant was not legally authorized. The term "legally authorized" means that the drugs were not dispensed pursuant to a lawful prescription or by a prescribing practitioner.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (sold / possessed) *<identify drug>*, 2) *<identify drug>* can only legally be obtained through a legitimate prescription, and 3) the defendant's (sale / possession) of the drug was not authorized by law.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of illegal (possession / sale) of a prescription drug, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

<sup>2</sup> See General Statutes § 21a-106 (k) and § 20-571 (14).

## **8.2 WEAPONS**

### *Sales and Regulation*

- 8.2-1 Improper Sale, Delivery or Transfer of Pistol or Revolver -- § 29-33 (a)**
- 8.2-2 Purchasing a Pistol or Revolver without a Permit -- § 29-33 (b)**
- 8.2-3 False Statement or Information in Connection with Sale or Transfer of a Pistol or Revolver or a Firearm-- § 29-34 (a) and § 29-37e**
- 8.2-4 Sale or Transfer of Pistol or Revolver to Person under 21 Years of Age -- § 29-34 (b)**
- 8.2-5 Purchase of Firearm with Intent to Transfer it to Person Prohibited from Purchasing or Possessing -- § 29-37j**
- 8.2-6 Altering of Firearm Identification Mark -- § 29-36**
- 8.2-7 Sale of a Facsimile Firearm -- § 53-206c (b)**

### *Possession and Carrying*

- 8.2-8 Criminal Possession of a Firearm or Electronic Defense Weapon -- § 53a-217**
- 8.2-9 Criminal Possession of a Pistol or Revolver -- § 53a-217c**
- 8.2-10 Possession of a Weapon on School Grounds -- § 53a-217b**

- 8.2-11 Possession of a Sawed-Off Shotgun or Silencer -- § 53a-211**
- 8.2-12 Weapons in Vehicles -- § 29-38**
- 8.2-13 Shotguns, Rifles and Muzzleloaders in Vehicles and Snowmobiles -- § 53-205**
- 8.2-14 Machine Guns -- § 53-202**
- 8.2-15 Carrying a Pistol or Revolver without Permit -- § 29-35**
- 8.2-16 Carrying Dangerous Weapons -- § 53-206**
- 8.2-17 Carrying a Firearm while Intoxicated -- § 53-206d (a)**
- 8.2-18 Carrying or Brandishing Facsimile Firearm in a Threatening Manner -- § 53-206c (c)**
- 8.2-19 Brandishing Facsimile Firearm in the Presence of an Officer -- § 53-206c (d)**

*Miscellaneous Firearm Offenses*

- 8.2-20 Unlawful Discharge of Firearms -- § 53-203**
- 8.2-21 Stealing a Firearm -- § 53a-212**
- 8.2-22 Criminal Use of Firearm or Electronic Defense Weapon -- § 53a-216**
- 8.2-23 Criminally Negligent Storage of a Firearm -- § 53a-217a**
- 8.2-24 Hunting while Intoxicated -- § 53-206d (b)**

*Assault Weapons*

**8.2-25 Sale or Transfer of Assault Weapon -- §  
53-202b**

**8.2-26 Possession of Assault Weapon -- § 53-202c**

**8.2-27 Transportation of Assault Weapon -- §  
53-202f**

**8.2-28 Affirmative Defense to Possession of  
Assault Weapon -- § 53-202o**

*Body Armor and Bombs*

**8.2-29 Criminal Possession of Body Armor -- §  
53a-217d**

**8.2-30 Sale or Delivery of Body Armor -- §  
53-341b**

**8.2-31 Manufacture of Bombs -- § 53-80a**

*Firearms Trafficking*

**8.2-32 Firearms Trafficking -- § 53-202aa**

## 8.2-1 Improper Sale, Delivery or Transfer of Pistol or Revolver -- § 29-33 (a)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the (sale / delivery / transfer) of a pistol or revolver to a person who is prohibited by law<sup>1</sup> from possessing a pistol or revolver.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Sold, delivered or transferred a pistol or revolver

The first element is that the defendant (sold / delivered / transferred) a pistol or revolver. The words sell, deliver and transfer, as used in this statute, have their ordinary meaning. A "pistol or revolver" means any firearm having a barrel less than twelve inches.<sup>2</sup> The state alleges that the defendant (sold / delivered / transferred) a pistol or revolver to *<insert name of person>*.

### Element 2 - To a person prohibited from possessing

The second element is that the person to whom the defendant (sold / delivered / transferred) it was prohibited by law from possessing a pistol or revolver. The state alleges that *<insert name of person>* was prohibited from possessing a pistol or revolver at the time of the transaction because (he/she) *<insert one of the following:>*

- had been convicted of *<insert alleged conviction>*. "Convicted" means having a judgment of conviction entered by a court of competent jurisdiction. This conviction must have occurred prior to the date of the alleged transaction.
- had been adjudicated delinquent for committing a serious juvenile offense, specifically *<insert alleged offense>*.
- had been discharged from custody on *<insert date>* after having been found not guilty of *<insert crime>* by reason of mental disease or defect.
- had been confined in a hospital for persons with psychiatric disabilities until *<insert date>* by order of a probate court.
- knew that (he/she) was subject to a (restraining / protective) order of (this state / the state of *<insert state>*). *<Review evidence of order.>* All (restraining / protective) orders prohibit the subject of the order from possessing firearms.
- knew that (he/she) was subject to a firearms seizure order. *<Review evidence of order.>*
- was prohibited by federal law from possessing a pistol or revolver, specifically *<insert relevant federal prohibition>*.
- was an alien illegally or unlawfully in the United States.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (sold / delivered / transferred) a pistol or revolver to *<insert name of person>*, and 2) *<insert name of person>* was prohibited by law from possessing a pistol or revolver at the time of the transaction.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the (sale / delivery / transfer) of a pistol or revolver to a person who is prohibited

by law from possessing a pistol or revolver, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> As provided in General Statutes § 53a-217c.

<sup>2</sup> Because the definition of "pistol or revolver" derives from General Statutes § 29-27, operability of the pistol or revolver is not a requirement of this offense. See glossary entry for pistol or revolver.

### *Commentary*

#### *Sentence Enhancer*

General Statutes § 29-33 (i) provides a sentence enhancement if the pistol or revolver was stolen, or the manufacturer's number or other mark of identification on such pistol or revolver has been altered, removed or obliterated. See *Altering of Firearm Identification Mark*, Instruction 8.2-6. The jury must find this fact proved beyond a reasonable doubt. See *Sentence Enhancers*, Instruction 2.11-4.

## 8.2-2 Purchasing a Pistol or Revolver without a Permit -- § 29-33 (b)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with purchasing or receiving a pistol or revolver without a valid permit.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Purchased or received a pistol or revolver**

The first element is that the defendant purchased or received a pistol or revolver. A "pistol or revolver" means any firearm having a barrel less than twelve inches.<sup>1</sup>

### **Element 2 - Without a permit**

The second element is that the defendant did not have a valid permit. <Review evidence of permit.><sup>2</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (purchased / received) a pistol or revolver, and 2) the defendant did not have a valid permit.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of purchasing or receiving a pistol or revolver without a permit, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Because the definition of "pistol or revolver" derives from General Statutes § 29-27, operability of the pistol or revolver is not a requirement of this offense. See glossary entry for pistol or revolver.

<sup>2</sup> The statute specifies a carrying permit issued pursuant to General Statutes § 29-28 (b), a retail sales permit issued pursuant to General Statutes § 29-28 (a), or an eligibility certificate issued pursuant to General Statutes § 29-36f. A federal marshal, parole officer or peace officer is not required to have a permit.

## 8.2-3 False Statement or Information in Connection with Sale or Transfer of a Pistol or Revolver or a Firearm -- § 29-34 (a) and § 29-37e

Revised to December 1, 2007

**Note:** General Statutes § 29-34 (a) prohibits making a false statement in the sale or transfer of a pistol or revolver, and § 29-37e prohibits the same in the sale of any firearm other than a pistol or revolver. The language is identical in both statutes. Tailor the instruction according to the type of firearm at issue.

The defendant is charged [in count \_\_\_] with (making a false statement / giving false information) in the sale or transfer of a (pistol or revolver / firearm). The statute defining this offense reads in pertinent part as follows:

no person shall (make any false statement / give any false information) connected with any purchase, sale, delivery or other transfer of any (pistol or revolver / firearm).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sold or transferred a firearm**

The first element is that the defendant purchased, sold, delivered or transferred a (pistol or revolver / firearm). The words sale, delivery and transfer have their ordinary meaning. *<Insert the appropriate definition:>*

- A "firearm"<sup>1</sup> is any weapon from which a shot is fired by the force of an explosion.
- A "pistol or revolver" means any firearm having a barrel less than twelve inches.

### **Element 2 - False statement**

The second element is that the defendant knowingly (made a false statement / knowingly gave false information) in connection with that purchase, sale, delivery or transfer. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. *<See Knowledge, Instruction 2.3-3.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant purchased, sold, delivered or transferred a (pistol or revolver / firearm), and 2) (he/she) knowingly (made a false statement / gave false information) in connection with that purchase, sale, delivery or transfer.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of (making a false statement / giving false information) in the sale or transfer of a (pistol or revolver / firearm), then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> This statute does not incorporate the definition of "firearm" in General Statutes § 53a-3 (19), so the ordinary meaning of the word is used. It is not necessary, under this definition, that the firearm be operable. Because the definition of "pistol or revolver" derives from General Statutes § 29-27, operability of the pistol or revolver is not a requirement. See glossary entry for pistol or revolver.

## 8.2-4 Sale or Transfer of Pistol or Revolver to Person under 21 Years of Age -- § 29-34 (b)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the sale or transfer of a pistol or revolver to a person under 21 years of age. The statute defining this offense reads in pertinent part as follows:  
no person shall (sell / barter / hire / lend / give / deliver / transfer) to any person under the age of twenty-one years any pistol or revolver.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sold or transferred pistol or revolver**

The first element is that the defendant (sold / bartered / hired / lent / gave / delivered / transferred) a pistol or revolver to another person. The word[s] (sold / bartered / hired / lent / gave / delivered / transferred) (has its / have their) ordinary meaning.

A "pistol or revolver" means any firearm having a barrel less than twelve inches.<sup>1</sup>

### **Element 2 - To a person under 21 years of age**

The second element is that the person was under 21 years of age at the time that (he/she) received the pistol or revolver.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (sold / bartered / hired / lent / gave / delivered / transferred) a pistol or revolver to another person, and 2) that person was under 21 years of age at the time.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the sale or transfer of a pistol or revolver to a person under 21 years of age, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Because the definition of "pistol or revolver" derives from General Statutes § 29-27, operability of the pistol or revolver is not a requirement of this offense. See glossary entry for pistol or revolver.

### ***Commentary***

See General Statutes § 29-34 (b) for exceptions to culpability. "[W]here exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

## **8.2-5 Purchase of Firearm with Intent to Transfer it to Person Prohibited from Purchasing or Possessing -- § 29-37j**

Revised to December 1, 2007 (modified June 13, 2008)

### **A. If charged with a violation of § 29-37j (a):**

The defendant is charged [in count \_\_\_] with purchasing a firearm with intent to provide it to a person prohibited from possessing firearms. The statute defining this offense imposes punishment on any person who purchases a firearm pursuant to legal procedures for purchasing firearms with the intent to transfer such firearm to any other person who the transferor knows or has reason to believe is prohibited from purchasing or otherwise receiving such a firearm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

#### **Element 1 - Lawfully purchased a firearm**

The first element is that the defendant lawfully purchased a firearm. This means that (he/she) had a permit<sup>1</sup> or legal right to do so.

"Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged. You must find that the firearm was operable at the time of the incident.<sup>2</sup>

#### **Element 2 - Intent to transfer to person**

The second element is that the defendant did so with the specific intent to transfer the firearm to another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

#### **Element 3 - Knowledge that other person was prohibited from purchasing or possessing firearm**

The third element is that the defendant knew or had reason to believe that the intended recipient of the firearm was prohibited from purchasing or otherwise receiving a firearm because (he/she) did not have a valid permit. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See *Knowledge, Instruction 2.3-3.*>

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant lawfully purchased a firearm, 2) (he/she) specifically intended to transfer that firearm to another person, and 3) (he/she) knew or had reason to believe that the intended recipient of the firearm was prohibited from purchasing or otherwise receiving a firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of this offense, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **B. If charged with a violation of § 29-37j (b)**

The defendant is charged [in count \_\_\_] with (soliciting / employing / assisting) another person to purchase a firearm and provide that firearm to a person not allowed to possess firearms. The statute defining this offenses imposes punishment on any person prohibited from purchasing or otherwise receiving or possessing a firearm who (solicits / employs / assists) any person to purchase a firearm with the intent to provide it to a person prohibited from possessing firearms.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Prohibited from purchasing or possessing a firearm**

The first element is that the defendant was prohibited from purchasing or otherwise receiving or possessing a firearm by virtue of not having a permit.

### **Element 2 - Had another person purchase firearm**

The second element is that the defendant (solicited / employed / assisted) another person to lawfully purchase a firearm.

A "firearm" is any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged. You must find that the firearm was operable at the time of the incident.<sup>3</sup>

### **Element 3 - Intent to transfer to person**

The third element is that the defendant specifically intended that the firearm would be transferred to a person who did not have a permit to possess a firearm. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was prohibited from purchasing or otherwise receiving or possessing a firearm by virtue of not having a permit, 2) (he/she) (solicited / employed / assisted) <insert name of other person> to lawfully purchase a firearm, and 3) (he/she) intended to transfer that firearm to <insert name of intended recipient> who was prohibited from possessing a firearm by virtue of not having a lawful permit.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of this offense, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Pursuant to General Statutes § 29-33 or § 29-37a.

<sup>2</sup> This statute specifically incorporates the definition of "firearm" as found in General Statutes § 53a-3 (19), which requires that the firearm be operable.

<sup>3</sup> Id.

### *Commentary*

#### *Sentence Enhancer*

Section 29-37j (b) provides a sentence enhancement for a conviction of subsection (b) if the transfer involved more than one firearm. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

#### *Subsequent offender*

General Statutes § 29-37j (c) provides for an enhanced sentence if the defendant has been convicted of a felony within the prior five year period. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## 8.2-6 Altering of Firearm Identification Mark -- § 29-36

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with the alteration of a firearm identification mark. The statute defining this offense reads in pertinent part as follows:

no person shall (remove / deface / alter / obliterate) the name of any maker or model or any maker's number or other mark of identification on any firearm.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt that the defendant (removed / defaced / altered / obliterated) the name of any maker or model or any maker's number or other mark of identification on a firearm.

A "firearm" is any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged. For purposes of this offense, you must find that the firearm was operable.<sup>1</sup>

[<Insert if applicable:>

The statute defining this offense provides that if you find that the defendant was in possession of or owned a firearm on which the maker's name, number, model or other identification mark has been (removed / defaced / altered / obliterated), then you may find, but are not required to, that it was the defendant who (removed / defaced / altered / obliterated) the identification mark, number, model or name of the firearm. This inference is not a necessary one, but it is an inference you may draw if you find it is reasonable and logical and in accordance with my instructions on circumstantial evidence.<sup>2</sup>

The defendant need not be the owner of the firearm to have been in possession of it. "Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>3</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the firearm. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the firearm. <See Knowledge, Instruction 2.3-3.>

<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>]

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant (removed / defaced / altered / obliterated) the name of any maker or model or any maker's number or other mark of identification on a firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of altering a firearm identification mark, then you shall find the defendant guilty.

On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> This statute specifically incorporates the definition of "firearm" as found in General Statutes § 53a-3 (19), which requires that the firearm be operable.

<sup>2</sup> The inference is permissive, rather than mandatory. See *State v. Francis*, 246 Conn. 339, 352 (1998); *State v. Turner*, 62 Conn. App. 376, 393 (2001).

<sup>3</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

## 8.2-7 Sale of a Facsimile Firearm -- § 53-206c (b)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the sale of a facsimile firearm. The statute that defines this offense reads in pertinent part as follows:

no person shall give, offer for sale or sell any facsimile of a firearm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Gave, sold or offered for sale a facsimile of a firearm**

The first element is that the defendant gave, sold, or offered for sale a facsimile of a firearm. The terms gave, sold and offered for sale have their ordinary meaning.

### **Element 2 - Facsimile that could pass as a real firearm**

The second element is that the facsimile was such that it could reasonably be perceived as a real firearm.<sup>1</sup> "Firearm" is any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>2</sup>

A "facsimile of a firearm" is (A) any nonfunctional imitation of an original firearm which was manufactured, designed and produced since 1898, or (B) any nonfunctional representation of a firearm other than an imitation of an original firearm, provided such representation could reasonably be perceived to be a real firearm. Such term does not include any look-a-like, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional BB or pellet -firing air gun that expels a metallic or paint-contained projectile through the force of air pressure.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant gave, sold, or offered for sale a facsimile of a firearm, and 2) it could reasonably be perceived as a real firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the sale of a facsimile firearm, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The statute provides that "[t]he provisions of this subsection shall not apply to any facsimile of a firearm, which, because of its distinct color, exaggerated size or other design features, cannot reasonably be perceived to be a real firearm."

<sup>2</sup> Although § 53-206c specifically references the definition of "firearm" in § 53a-3 (19), which requires that the firearm be operable, operability is not an issue with this offense, because the object is not a real firearm.

## 8.2-8 Criminal Possession of a Firearm, Ammunition or Electronic Defense Weapon -- § 53a-217

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with criminal possession of (a firearm / ammunition / an electronic defense weapon). The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal possession of (a firearm / ammunition / an electronic defense weapon) when such person possesses (a firearm / ammunition / an electronic defense weapon) and *<insert as appropriate:>*

- **§ 53a-217 (a) (1):** has been convicted of (a felony / certain misdemeanors *<insert alleged misdemeanor>*).<sup>1</sup>
- **§ 53a-217 (a) (2):** has been convicted as delinquent for the commission of a serious juvenile offense.<sup>2</sup>
- **§ 53a-217 (a) (3):** had been discharged from custody within the preceding twenty years after having been found not guilty of a crime by reason of mental disease or defect.
- **§ 53a-217 (a) (4):** knows that (he/she) is subject to *<insert one of the following:>*
  - **(A):** a restraining or protective order of a court of this state that has been issued against (him/her), after notice and an opportunity to be heard has been provided to (him/her), in a case involving the use, attempted use or threatened use of physical force against another person.
  - **(B):** a foreign order of protection<sup>3</sup> that has been issued against (him/her) in a case involving the use, attempted use or threatened use of physical force against another person.
- **§ 53a-217 (a) (5) (A):** was confined in a hospital for persons with psychiatric disabilities within the preceding sixty months by order of a probate court, [on or after October 1, 2013,] and the person has a valid permit or certificate to carry a pistol or revolver.<sup>4</sup> A "hospital for psychiatric disabilities" means any public or private hospital, retreat, institution, house or place in which any mentally ill person is received or detained as a patient, but does not include any correctional institution of this state.
- **§ 53a-217 (a) (5) (B):** was voluntarily admitted [on or after October 1, 2013] to a hospital for persons with psychiatric disabilities within the preceding six months for care and treatment of a psychiatric disability and not solely for being an alcohol-dependent person or a drug-dependent person. A "hospital for psychiatric disabilities" means any public or private hospital, retreat, institution, house or place in which any mentally ill person is received or detained as a patient, but does not include any correctional institution of this state.
- **§ 53a-217 (a) (6):** knows that such person is subject to a firearms seizure order issued after notice and an opportunity to be heard has been provided to such person.<sup>5</sup>
- **§ 53a-217 (a) (7):** is prohibited from shipping, transporting, possessing or receiving a firearm pursuant to federal law.<sup>6</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Possessed firearm, ammunition, or electronic defense weapon**

The first element is that the defendant possessed (a firearm / ammunition / an electronic defense weapon). *<Insert the appropriate definition(s):>*

- A "firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged. You must find that the firearm was operable at the time the defendant possessed it.<sup>7</sup>
- "Ammunition" means a loaded cartridge, consisting of a primed case, propellant or projectile, designed for use in any firearm.
- An "electronic defense weapon" means a weapon that by electronic impulse or current is capable of immobilizing a person temporarily, but is not capable of inflicting death or serious physical injury.

"Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>8</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the firearm. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the firearm. *<See Knowledge, Instruction 2.3-3.>*

*<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>*

### **Element 2 - Possession prohibited**

The second element is that at the time (he/she) possessed the (firearm / ammunition / electronic defense weapon), (he/she) was prohibited from possessing (a firearm / ammunition/ an electronic defense weapon) because (he/she) *<insert specific allegations and tailor to facts and evidence>*.<sup>9</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant possessed (a firearm / ammunition / an electronic defense weapon), and 2) (he/she) was prohibited from possessing (a firearm / ammunition / an electronic defense weapon) at the time because *<insert specific allegations>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal possession of (a firearm / ammunition / an electronic defense weapon), then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Effective October 1, 2013, the statute includes the following misdemeanors:

§ 21a-279, Possession of a controlled substance

§ 53a-58, Criminally negligent homicide

§ 53a-61, Assault in the third degree

§ 53a-61a, Assault of an elderly, blind, disabled or pregnant person or a person

with intellectual disability in the third degree  
§ 53a-62, Threatening in the second degree  
§ 53a-63, Reckless endangerment in the first degree  
§ 53a-96, Unlawful restraint in the second degree  
§ 53a-175, Riot in the first degree  
§ 53a-176, Riot in the second degree  
§ 53a-178, Inciting to riot  
§ 53a-181d, Stalking in the second degree

<sup>2</sup> As defined in General Statutes § 46b-120 (3).

<sup>3</sup> As defined in General Statutes § 46b-15a.

<sup>4</sup> The statute specifies a carrying permit issued pursuant to General Statutes § 29-28 (b), a retail sales permit issued pursuant to General Statutes § 29-28 (a), or an eligibility certificate issued pursuant to General Statutes § 29-36f.

<sup>5</sup> Pursuant to General Statutes § 29-38c (d).

<sup>6</sup> 18 U.S.C. § 922 (g) (4).

<sup>7</sup> The definition of "firearm" as found in General Statutes § 53a-3 (19), which applies to this offense, requires that the firearm be operable.

<sup>8</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

<sup>9</sup> Parties often will stipulate to the reason why the defendant is prohibited from possessing a firearm. See Stipulations, Instruction 2.6-9.

## 8.2-9 Criminal Possession of a Pistol or Revolver -- § 53a-217c

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with criminal possession of a pistol or revolver. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal possession of a pistol or revolver when such person possesses a pistol or revolver and *<insert appropriate subsection:>*

- **§ 53a-217c (a) (1):** has been convicted of (a felony / certain misdemeanors *<insert alleged misdemeanor>*).<sup>1</sup>
- **§ 53a-217c (a) (2):** has been convicted as delinquent for the commission of a serious juvenile offense.<sup>2</sup>
- **§ 53a-217c (a) (3):** has been discharged from custody within the preceding 20 years after having been found not guilty of a crime by reason of mental disease or defect.
- **§ 53a-217 (a) (4) (A):** was confined in a hospital for persons with psychiatric disabilities within the preceding sixty months by order of a probate court, [on or after October 1, 2013,] and the person has a valid permit or certificate to carry a pistol or revolver.<sup>3</sup> A "hospital for psychiatric disabilities" means any public or private hospital, retreat, institution, house or place in which any mentally ill person is received or detained as a patient, but does not include any correctional institution of this state.
- **§ 53a-217 (a) (4) (B):** was voluntarily admitted [on or after October 1, 2013] to a hospital for persons with psychiatric disabilities within the preceding six months for care and treatment of a psychiatric disability and not solely for being an alcohol-dependent person or a drug-dependent person. A "hospital for psychiatric disabilities" means any public or private hospital, retreat, institution, house or place in which any mentally ill person is received or detained as a patient, but does not include any correctional institution of this state.
- **§ 53a-217c (a) (5):** knows that such person is subject to *<insert one of the following:>*
  - **(A):** a restraining or protective order of a court of this state that has been issued against such person, after notice and an opportunity to be heard has been provided to such person, in a case involving the use, attempted use or threatened use of physical force against another person.
  - **(B):** a foreign order of protection<sup>4</sup> that has been issued against such person in a case involving the use, attempted use or threatened use of physical force against another person.
- **§ 53a-217c (a) (6):** knows that such person is subject to a firearms seizure order after notice and an opportunity to be heard has been provided to such person.<sup>5</sup>
- **§ 53a-217c (a) (7):** is prohibited from shipping, transporting, possessing or receiving a firearm pursuant to federal law.<sup>6</sup>
- **§ 53a-217c (a) (8):** is an alien illegally or unlawfully in the United States.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

**Element 1 - Possessed a pistol or revolver**

The first element is that the defendant possessed a pistol or revolver. A "pistol or revolver" is any firearm having a barrel less than twelve inches.<sup>7</sup>

"Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>8</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the firearm. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the firearm. <See Knowledge, Instruction 2.3-3.>

<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>

**Element 2 - Possession prohibited**

The second element is that at the time (he/she) possessed it, the defendant was prohibited from possessing a pistol or revolver because (he/she) <insert as appropriate and tailor to facts and evidence>.<sup>9</sup>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant possessed a pistol or revolver, and 2) (he/she) was prohibited from possessing the pistol or revolver at the time because <insert specific allegations>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal possession of a pistol or revolver, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The specified misdemeanors are:

- § 21a-279, Possession of a controlled substance
- § 53a-58, Criminally negligent homicide
- § 53a-61, Assault in the third degree
- § 53a-61a, Assault of an elderly, blind, disabled or pregnant person or a person with intellectual disability in the third degree
- § 53a-62, Threatening in the second degree
- § 53a-63, Reckless endangerment in the first degree
- § 53a-96, Unlawful restraint in the second degree
- § 53a-175, Riot in the first degree
- § 53a-176, Riot in the second degree
- § 53a-178, Inciting to riot
- § 53a-181d, Stalking in the second degree

<sup>2</sup> As defined in General Statutes § 46b-120 (3).

<sup>3</sup> The statute specifies a carrying permit issued pursuant to General Statutes § 29-28 (b), a retail sales permit issued pursuant to General Statutes § 29-28 (a), or an eligibility certificate issued pursuant to General Statutes § 29-36f.

<sup>4</sup> As defined in General Statutes § 46b-15a.

<sup>5</sup> Pursuant to General Statutes § 29-38c (d).

<sup>6</sup> 18 U.S.C. § 922 (g) (4).

<sup>7</sup> This statute specifically incorporates the definition of "pistol or revolver" found in General Statutes § 29-27, so operability of the pistol or revolver is not a requirement of this crime. See glossary entry for pistol or revolver.

<sup>8</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

<sup>9</sup> Parties often will stipulate to the reason why the defendant is prohibited from possessing a firearm. See Stipulations, Instruction 2.6-9.

## 8.2-10 Possession of a Weapon on School Grounds -- § 53a-217b

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with the possession of a weapon on school grounds. The statute defining this offense reads in pertinent part as follows:

a person is guilty of possession of a weapon on school grounds when, knowing that such person is not licensed or privileged to do so, such person possesses a (firearm / deadly weapon) (in or on the real property comprising a public or private elementary or secondary school / at a school-sponsored activity).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Possessed a firearm or deadly weapon**

The first element is that the defendant possessed a (firearm / deadly weapon). *<Insert appropriate definition(s):>*

- "Firearm" is defined by statute as any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged. You must find that the firearm was operable at the time the defendant possessed it.<sup>1</sup>
- "Deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles. If the weapon is a firearm, it may be unloaded, but it must be in such condition that a shot may be discharged from it. Thus, if the weapon is loaded but not in working order, it is not a deadly weapon. If the weapon is unloaded but in working order, it is a deadly weapon.

"Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>2</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the firearm. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the firearm. *<See Knowledge, Instruction 2.3-3.>*

*<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>*

### **Element 2 - On school grounds**

The second element is that the defendant was (on the real property comprising a public or private elementary or secondary school / at a school-sponsored event). ["School-sponsored activity" means "any activity sponsored, recognized or authorized by a board of education and includes activities conducted on or off school property."<sup>3</sup>]

**Element 3 - With knowledge**

The third element is that the defendant knew that (he/she) was not licensed or privileged to do so. The phrase "license or privilege" means having been given permission or right to do so. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See *Knowledge, Instruction 2.3-3.*>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant possessed a (firearm / deadly weapon), 2) (he/she) was (on school grounds / at a school-sponsored event), and 3) (he/she) knew that (he/she) was not licensed or privileged to do so.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of possession of a weapon on school grounds, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The definition of "firearm" as found in General Statutes § 53a-3 (19), which applies to this offense, requires that the firearm be operable.

<sup>2</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

<sup>3</sup> General Statutes § 10-233a (h), which is specifically incorporated into § 53a-217b.

***Commentary***

See General Statutes § 53a-217b (b) for exceptions to culpability. "[W]here exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

## 8.2-11 Possession of a Sawed-Off Shotgun or Silencer -- § 53a-211

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with the possession of a (sawed-off shotgun / silencer). The statute defining this offense reads in pertinent part as follows:  
a person is guilty of possession of a (sawed-off shotgun / silencer) when (he/she) (owns / controls / possesses) any (sawed-off shotgun / silencer).

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt that the defendant (owned / controlled / possessed) a (sawed-off shotgun / silencer).

<Insert the appropriate definition:>

- A "sawed-off shotgun" is a shotgun with a barrel that measures less than eighteen inches or an overall length of less than twenty-six inches. You must find that the shotgun was operable at the time the defendant possessed it.<sup>1</sup>
- A silencer is any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol, or other firearm.

"Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>2</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the firearm. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the firearm. <See Knowledge, Instruction 2.3-3.>

<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant (owned / controlled / possessed) a (sawed-off shotgun / silencer).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of possession of a (sawed-off shotgun / silencer), then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> "Shotgun" is incorporated in the definition of "firearm," which requires that the firearm be operable. See glossary entry for pistol or revolver.

<sup>2</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

*Commentary*

See General Statutes § 53a-211 (6) for exceptions to culpability. "[W]here exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

## 8.2-12 Weapons in Vehicles -- § 29-38

Revised to December 1, 2007 (modified November 17, 2015)

The defendant is charged [in count \_\_\_] with unlawfully carrying a weapon in a vehicle. The statute defining this offense imposes punishment on any person who knowingly has, in any vehicle owned, operated or occupied by such person, any (weapon / pistol or revolver for which a proper permit has not been issued / machine gun which has not been registered).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Vehicle

The first element is that the defendant owned, operated or occupied the vehicle.

### Element 2 - Weapon

The second element is that the defendant had a (weapon / pistol or revolver / machine gun) in the vehicle. *<Insert the appropriate definition(s):>*

- The term "weapon" includes *<insert one of the following:>*
  - BB gun.
  - blackjack.
  - metal or brass knuckles.
  - any dirk knife.
  - any switch knife.
  - any knife having an automatic spring release device by which a blade is released from the handle, having a blade of over one and one-half inches in length.
  - stiletto.
  - any knife the edged portion of the blade of which is four inches or more in length.
  - any police baton or nightstick.
  - any martial arts weapon or electronic defense weapon.
  - any other dangerous or deadly weapon or instrument.
- The term "pistol or revolver" means any firearm having a barrel less than twelve inches.<sup>1</sup>
- The term "machine gun" applies to and includes a weapon of any description, loaded or unloaded, which shoots, is designed to shoot or can be readily restored to shoot automatically more than one projectile, without manual reloading, by a single function of the trigger, and shall also include any part or combination of parts designed for use in converting a weapon into a machine gun and any combination of parts from which a machine gun can be assembled if such parts are in possession of or under the control of a person.

### Element 3 - Knowledge

The third element is that the defendant knew the (weapon / pistol or revolver / machine gun) was in the vehicle. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. *<See Knowledge, Instruction 2.3-3.>*

**[Element 4 - No permit or registration<sup>2</sup>**

The fourth element is that the defendant had no (permit for the pistol or revolver / registration for the machine gun).<sup>3]</sup>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) owned, operated or occupied the vehicle, 2) (he/she) had a <insert type of weapon> in the vehicle, [and] 3) (he/she) knew that the <insert type of weapon> was in the vehicle, [and 4) (he/she) had no (permit for the pistol or revolver/ registration for the machine gun).]

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of having a weapon in a motor vehicle, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Because the definition of "pistol or revolver" derives from General Statutes § 29-27, operability of the pistol or revolver is not a requirement of this offense. See glossary entry for pistol or revolver.

<sup>2</sup> General Statutes § 29-28 requires a permit for all pistols and revolvers. General Statutes § 53-202 requires all machine guns to be registered. A permit or registration is not applicable to other weapons, so this element should not be included when the allegation is of such a weapon.

<sup>3</sup> It must be shown that no one in the vehicle had a permit for the pistol or revolver. See *State v. Smith*, 9 Conn. App. 330, 339 (1986).

***Commentary***

The elements of this offense are set forth in *State v. Delossantos*, 211 Conn. 258, 273, cert. denied, 493 U.S. 866, 110 S.Ct. 188, 107 L.Ed.2d 142 (1989); see also *State v. Smith*, 63 Conn. App. 228, 242, cert. denied, 258 Conn. 901 (2001) (knowledge, not possession, is sufficient for conviction); *State v. Owens*, 25 Conn. App. 181, cert. denied, 220 Conn. 910 (1991) (the crime is having a weapon in a motor vehicle, not the possession or ownership of the weapon); *State v. Nelson*, 17 Conn. App. 556, 561 (1989) (lack of proper permit for pistol or revolver is a required element)

The provision in this statute that states that "the presence of any such weapon in any vehicle shall be prima facie evidence of a violation of this section by the owner, operator and each occupant thereof" was held unconstitutional as a violation of the defendant's due process rights. *State v. Watson*, 165 Conn. 577, 595-97 (1973), cert. denied, 416 U.S. 960, 94 S.Ct. 1977, 40 L.Ed.2d 311 (1974).

In *State v. DiCiccio*, 315 Conn. 79, 147-49 (2014), the Supreme Court held that § 29-38 was unconstitutional as far as it constituted a total ban on the transportation of dirk knives and police batons. In the course of its analysis of the defendant's void for vagueness argument, the Court provides a discussion of the various meanings of the term "dirk knife" and "police baton" applied by other courts.

See General Statutes § 29-38 (b) for exceptions to culpability. "[W]here exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

## 8.2-13 Shotguns, Rifles and Muzzleloaders in Vehicles and Snowmobiles -- § 53-205

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with having a (shotgun / rifle / muzzleloader) in a (vehicle / snowmobile). The statute defining this offense reads in pertinent part as follows:  
no person shall (carry / possess) in any (vehicle / snowmobile) any (shotgun / rifle / muzzleloader) of any gauge or caliber while the (shotgun / rifle / muzzleloader) is loaded and operable.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Carried a shotgun, rifle, or muzzleloader

The first element is that the defendant (carried / possessed) a (shotgun / rifle / muzzleloader) of any gauge or caliber. *<Insert appropriate definition(s):>*

- A "rifle" is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.
- A "shotgun" is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.
- A "muzzleloader" is a rifle or shotgun that is incapable of firing a self-contained cartridge and that must be loaded at the muzzle end, which is the front end of the barrel.

*<Insert as appropriate:>*

- A weapon is "carried" if it is on one's person and within the person's control or dominion, meaning that the person must be aware of its presence.<sup>1</sup>
- "Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>2</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the firearm. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the firearm. *<See Knowledge, Instruction 2.3-3.>*

*<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>*

### Element 2 - While loaded

The second element is that the (shotgun / rifle / muzzleloader) was loaded and capable of being discharged. *<Insert as appropriate:>*

- A (shotgun / rifle) is loaded when it contains in the barrel, chamber or magazine any loaded shell or cartridge capable of being discharged.
- A muzzleloader is loaded when it has a percussion cap in place or when the powder pan of a flint lock contains powder.

**Element 3 - In a vehicle or snowmobile**

The third element is that the defendant (carried / possessed) the (shotgun / rifle / muzzleloader) in a (vehicle / snowmobile).

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (carried / possessed) a (shotgun / rifle / muzzleloader), 2) it was loaded, and 3) it was in a (vehicle / snowmobile).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of having a (shotgun / rifle / muzzleloader) in a (vehicle / snowmobile), then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Hopes*, 26 Conn. App. 367, 375, cert. denied, 221 Conn. 915 (1992). "[C]arrying and possession are different concepts, that is a person can possess an item without carrying it on his person." *State v. Williams*, 59 Conn. App. 603, 608, cert. denied, 254 Conn. 946 (2000).

<sup>2</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

**Commentary**

See General Statutes § 53-205 for exceptions to culpability. "[W]here exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

## 8.2-14 Machine Guns -- § 53-202

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with the possession or use of a machine gun. The statute defining this offense imposes punishment on any person who possesses or uses a machine gun <insert appropriate subsection:>

- § 53-202 (b): in the perpetration or attempted perpetration of a crime of violence.
- § 53-202 (c): for an offensive or aggressive purpose.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Possessed or used a machine gun

The first element is that the defendant possessed or used a machine gun.

"Machine gun" means a weapon of any description, loaded or unloaded, which shoots, is designed to shoot or can be readily restored to shoot automatically more than one projectile, without manual reloading, by a single function of the trigger, and shall also include any part or combination of parts designed for use in converting a weapon into a machine gun and any combination of parts from which a machine gun can be assembled if such parts are in the possession of or under the control of a person. "Projectile" means any size bullet that when affixed to any cartridge case may be propelled through the bore of a machine gun.<sup>1</sup>

"Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>2</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the firearm. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the firearm. <See Knowledge, Instruction 2.3-3.>

<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>

[<Insert if applicable:>

The statute defining this offense provides that if you find that the machine gun was in any (room / boat / vehicle), then you may find, but are not required to, that each person occupying that (room / boat / vehicle) was in possession of the machine gun. This inference is not a necessary one, but it is an inference you may draw if you find it is reasonable and logical and in accordance with my instructions on circumstantial evidence.<sup>3</sup>]

### Element 2 - Crime of violence / offensive or aggressive purpose

The second element is that the defendant possessed or used the machine gun <insert as appropriate:>

- in the perpetration or attempted perpetration of a crime of violence. "Crime of violence" includes (murder / manslaughter / kidnapping / sexual assault / sexual assault with a

firearm / assault in the first degree / assault in the second degree / robbery / burglary / larceny / riot in the first degree).<sup>4</sup>

- for an offensive or aggressive purpose.

[<Insert if appropriate:>

You may find, but are not required to,<sup>5</sup> that the machine gun was possessed or used for an offensive or aggressive purpose if you find any of the following:

- The machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy, by the person in whose possession the machine gun was found.
- The person possessing the machine gun was an unnaturalized foreign-born person, or a person who has been convicted of a crime of violence in any state or federal court of record of the United States of America, its territories or insular possessions.
- The machine gun has not been registered.
- Empty or loaded projectiles of any caliber that may be used in the machine gun are found in the immediate vicinity of the machine gun.]

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant possessed or used a machine gun, and 2) the possession or use of the machine gun was (in the perpetration or attempted perpetration of a crime of violence / for an offensive or aggressive purpose).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of possession or use of a machine gun, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Definitions of "machine gun" and "projectile" are found in General Statutes § 53-202 (a) and (c). See also glossary entry for machine gun.

<sup>2</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

<sup>3</sup> General Statutes § 53-202 (e). The inference is permissive, rather than mandatory. *State v. Gerardi*, 237 Conn. 348, 361 (1996).

<sup>4</sup> General Statutes § 53-202 (a) (2).

<sup>5</sup> General Statutes § 53-202 (d).

## 8.2-15 Carrying a Pistol or Revolver without Permit -- § 29-35 (a)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with unlawfully carrying a pistol or revolver without a permit. The statute defining this offense reads in pertinent part as follows:

no person shall carry any pistol or revolver upon (his/her) person, except when such person is within the dwelling house or place of business of such person, without a permit to carry the pistol or revolver.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Carried pistol or revolver**

The first element is that the defendant carried a pistol or revolver upon (his/her) person. The term "pistol or revolver" means any firearm having a barrel less than twelve inches.<sup>1</sup> A pistol or revolver is "carried" if it is on one's person and within the person's control or dominion, meaning that the person must be aware of its presence.<sup>2</sup>

### **Element 2 - Outside home or place of business**

The second element is that the defendant was not within (his/her) dwelling or place of business. In other words, the defendant had a pistol or revolver on (his/her) person in a public place.<sup>3</sup>

### **Element 3 - Without a permit<sup>4</sup>**

The third element is that the defendant did not have a permit<sup>5</sup> issued by the state to carry a pistol or revolver in public.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant carried a pistol or revolver, 2) (he/she) was outside (his/her) dwelling or place of business, and 3) (he/she) did not have a permit for it.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of carrying a pistol or revolver without a permit, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Operability of the pistol or revolver is not a requirement of this offense. See glossary entry for pistol or revolver.

<sup>2</sup> Proof of asportation of the pistol or revolver is not necessary. *State v. Hopes*, 26 Conn. App. 367, 374-75, cert. denied, 221 Conn. 915 (1992).

<sup>3</sup> See *State v. Hopes*, supra, 26 Conn. App. 375 (statute is "concerned with prohibiting the use of unlicensed weapons in public"). The "place of business" exception means only premises that contain a business in which the defendant has a proprietary or possessory interest, not a location at which the defendant is merely an employee. *State v. Vickers*, 260 Conn. 219, 221-22 (2002). It is also limited to fixed places of business only, and does not encompass taxicabs. *State v. Lutters*, 270 Conn. 198, 208 (2004). A stairway and landing leading to the defendant's apartment was not in his exclusive control and thus did not come within the dwelling exception. *State v. Sealy*, 208 Conn. 689, 694 (1988).

<sup>4</sup> See *State v. Beaton*, 170 Conn. 234, 241 (1976) ("[T]he words of the statute 'for which a proper permit has not been issued as provided in Sec. 29-28' appear as part of the enacting or prohibition clause of the statute. It is not an exception but a descriptive negative. . .").

<sup>5</sup> This could be either a municipal license or a state license. In 2001, the system of issuing municipal permits was replaced with a statewide system. See Public Acts 2001, No. 01-130.

### ***Commentary***

The uninterrupted act of carrying a pistol without a permit on different days is not a single continuous offense, but is rather multiple offenses, so the imposition of multiple punishments does not violate the prohibition against double jeopardy. *State v. Williams*, 59 Conn. App. 603, cert. denied, 254 Conn. 946 (2000).

The defense of duress would not justify the carrying of a pistol without a permit. *State v. Hopes*, supra, 26 Conn. App. 371-72.

See General Statutes § 29-28 for the procedure for obtaining a pistol permit. Public Act No. 01-130 amended the statute to replace locally issued permits with state permits.

See General Statutes § 29-35 (a) for exceptions to culpability. "[W]here exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

## 8.2-16 Carrying Dangerous Weapons -- § 53-206

Revised to April 23, 2010 (modified May 20, 2011)

The defendant is charged [in count \_\_\_] with carrying a dangerous weapon. The statute defining this offense imposes punishment on any person who carries upon (his/her) person *<insert one of the following:>*

- a BB gun.
- a blackjack.
- metal or brass knuckles.
- a dirk knife.
- a switch knife.
- a knife having an automatic spring release device by which a blade is released from the handle, having a blade of over one and one-half inches in length.
- a stiletto.
- a knife the edged portion of the blade of which is four inches or more in length.
- a police baton or nightstick.
- a martial arts weapon or electronic defense weapon.
- any dangerous or deadly weapon or instrument.<sup>1</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Carried weapon**

The first element is that the defendant carried *<insert specific weapon>* upon (his/her) person. A weapon is "carried" if it is on one's person and within the person's control or dominion, meaning that the person must be aware of its presence.<sup>2</sup>

*<Insert appropriate definition(s):>*

- A "martial arts weapon" is a nunchaku, kama, kasari-fundo, octagon sai, tonfa, or Chinese star.
- An "electronic defense weapon" is a weapon which by electronic impulse or current is capable of immobilizing a person temporarily, but is not capable of inflicting death or serious physical injury.
- "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in

fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

[<If the conduct involves a threat and not an actual use of a dangerous instrument:> A threat can only be punishable when it is a true threat, that is, a threat that a reasonable person would understand as a serious expression of an intent to harm or assault, and not as mere puffery, bluster, jest or hyperbole. In determining whether the threat is a true threat, consider the particular factual context in which the allegedly threatening conduct occurred which could include the reaction of the person allegedly being threatened and the defendant's conduct before and after the allegedly threatening conduct.]<sup>3</sup>

### **Element 2 - Outside dwelling or place of business.**

The second element is that the defendant was outside (his/her) dwelling or place of business.<sup>4</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant carried <insert specific weapon>, and 2) (he/she) was outside (his/her) dwelling or place of business.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of carrying a dangerous weapon, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Hopes*, 26 Conn. App. 367, 375, cert. denied, 221 Conn. 915 (1992).

<sup>2</sup> Note that the definition of "deadly weapon" in General Statutes § 53a-3 (6) explicitly excludes its application to § 53-206.

<sup>3</sup> See *State v. Cook*, 287 Conn. 237, 252 (2008).

<sup>4</sup> "General Statutes 53-206 (a) does not expressly except from its terms the carrying of a dangerous weapon in one's dwelling or abode. This, however, is an implied exception. See General Statutes 29-35 (allows the carrying of pistols or revolvers without a permit in one's dwelling or place of business). Section 29-35 provides in pertinent part: "No person shall carry any pistol or revolver upon his person, except when such person is within his dwelling house or place of business, without a permit to carry the same." *State v. Sealy*, 208 Conn. 689, 693 n.2 (1988).

### **Commentary**

A knife with a cutting blade less than 4 inches long, which does not explicitly come under the statute, may come under "dangerous or deadly weapon or instrument." *State v. Holloway*, 11 Conn. App. 665, 671 (1987).

Self-defense may be available to a charge under this statute, if it was the defendant's use of the item that made it a dangerous instrument. *State v. Ramos*, 271 Conn. 785, 803 n.13 (2004).

The "place of business" exception means only premises that contain a business in which the defendant has a proprietary or possessory interest, not a location at which the defendant is merely an employee. *State v. Vickers*, 260 Conn. 219, 221-22 (2002). It is also limited to fixed places of business only, and does not encompass taxicabs. *State v. Lutters*, 270 Conn. 198, 208 (2004). A stairway and landing leading to the defendant's apartment was not in his exclusive control and thus did not come within the dwelling exception. *State v. Sealy*, supra, 208 Conn. 694.

See General Statutes § 53-206 (b) for exceptions to culpability. "[W]here exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

## 8.2-17 Carrying a Firearm while Intoxicated -- § 53-206d (a)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with carrying a firearm while intoxicated. The statute defining this offense reads in pertinent part as follows:

no person shall carry a pistol, revolver, machine gun, shotgun, rifle or other firearm, which is loaded and from which a shot may be discharged, upon (his/her) person while *<insert as appropriate:>*

- under the influence of (intoxicating liquor / any drug / both)
- the ratio of alcohol in the blood of such person is ten-hundredths of one per cent or more of alcohol, by weight.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Carried a firearm

The first element is that the defendant carried a *<insert type of weapon>* upon (his/her) person. A weapon is "carried" if it is on one's person and within one's control or dominion, meaning that the person must be aware of its presence.<sup>1</sup>

### Element 2 - Loaded and operable

The second element is that the *<insert type of weapon>* was loaded and capable of firing a shot.

### Element 3 - While under the influence of intoxicating liquor or drug

The third element is that the defendant *<insert as appropriate:>*

- was under the influence of (intoxicating liquor / any drug / both). A person is under the influence of (intoxicating liquor / any drug / both) when as a result of (drinking such beverage / ingesting such drug) that person's mental, physical, or nervous processes have become so affected that the person lacks to an appreciable degree the ability to function properly in relation to the carrying of a firearm.<sup>2</sup>
- had a ratio of alcohol in (his/her) blood which was ten-hundredths of one per cent or more of alcohol by weight.<sup>3</sup>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant carried a firearm, 2) the firearm was loaded and operable, and 3) (he/she) was *<insert specific allegations as to defendant's condition>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of carrying a firearm while intoxicated, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Hopes*, 26 Conn. App. 367, 375, cert. denied, 221 Conn. 915 (1992).

<sup>2</sup> Definition of "under the influence" is derived from cases involving driving under the influence. See, e.g., *State v. Gordon*, 84 Conn. App. 519, 527, cert. denied, 271 Conn. 941 (2004).

<sup>3</sup> Note that the language of this statute does not conform to the standards provided in General Statutes § 14-227a, Driving Under the Influence, regarding blood alcohol content.

## 8.2-18 Carrying or Brandishing Facsimile Firearm in a Threatening Manner -- § 53-206c (c)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with carrying or brandishing a facsimile firearm. The statute defining this offense reads in pertinent part as follows:

no person shall (carry / draw / exhibit / brandish) a facsimile of a firearm or simulate a firearm in a threatening manner, with intent to frighten, vex or harass another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Carried, drew, exhibited or brandished a facsimile firearm

The first element is that the defendant (carried / drew / exhibited / brandished) a (facsimile / simulated) firearm. <Insert as appropriate:>

- "Carry" means to have upon one's person and within one's control or dominion, meaning that the person must be aware of its presence.<sup>1</sup>
- "Brandish" means to "to wave, shake, or exhibit in a menacing, challenging, or exultant way; to flourish."

### Element 2 - Facsimile could pass as a real firearm

The second element is that the facsimile was such that it could reasonably be perceived as a real firearm. "Firearm" is any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>2</sup>

A "facsimile of a firearm" is (A) any nonfunctional imitation of an original firearm which was manufactured, designed and produced since 1898, or (B) any nonfunctional representation of a firearm other than an imitation of an original firearm, provided such representation could reasonably be perceived to be a real firearm. Such term does not include any look-a-like, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional BB or pellet-firing air gun that expels a metallic or paint-contained projectile through the force of air pressure.

### Element 3 - Threatening manner

The third element is that the (facsimile / simulated) firearm was (carried / drew / exhibited / brandished) in a threatening manner.

### Element 4 - Intent

The fourth element is that the defendant specifically intended to frighten, vex or harass another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (carried / drew / exhibited / brandished) a facsimile firearm, 2) the facsimile could reasonably be perceived as a real firearm, 3) (he/she) did so in a threatening manner, and 4) (he/she) had the intent to frighten, vex or harass another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of carrying or brandishing a facsimile firearm, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Hopes*, 26 Conn. App. 367, 375, cert. denied, 221 Conn. 915 (1992).

<sup>2</sup> See definitions for machine gun, rifle, shotgun, pistol or revolver in the glossary.

## 8.2-19 Brandishing Facsimile Firearm in the Presence of an Officer -- § 53-206c (d)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with brandishing a facsimile firearm in the presence of (a peace officer / a firefighter / an emergency medical technician / a paramedic). The statute defining this offense reads in pertinent part as follows:

no person shall (draw / exhibit / brandish) a facsimile of a firearm or simulate a firearm in the presence of a (peace officer / firefighter / emergency medical technician / paramedic) engaged in the performance of (his/her) duties knowing or having reason to know that such (peace officer / firefighter / emergency medical technician / paramedic) is engaged in the performance of (his/her) duties, with intent to impede such person in the performance of (his/her) duties.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Drew, exhibited or brandished a facsimile firearm**

The first element is that the defendant (drew / exhibited / brandished) a (facsimile / simulated) firearm. "Brandish" means to "to wave, shake, or exhibit in a menacing, challenging, or exultant way; to flourish."

### **Element 2 - Facsimile that could pass as a real firearm**

The second element is that the facsimile was such that it could reasonably be perceived as a real firearm. "Firearm" is any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>1</sup>

A "facsimile of a firearm" is (A) any nonfunctional imitation of an original firearm which was manufactured, designed and produced since 1898, or (B) any nonfunctional representation of a firearm other than an imitation of an original firearm, provided such representation could reasonably be perceived to be a real firearm. Such term does not include any look-a-like, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional BB or pellet-firing air gun that expels a metallic or paint-contained projectile through the force of air pressure.

### **Element 3 - In the presence of an officer**

The third element is that the defendant did so in the presence of a (peace officer / firefighter / emergency medical technician / paramedic), who the defendant knew or had reason to know was engaged in the performance of (his/her) duties. A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See Knowledge, Instruction 2.3-3.>

### **Element 4 - Intent**

The fourth element is that the defendant specifically intended to impede the (peace officer / firefighter / emergency medical technician / paramedic) from performing (his/her) duties. A

person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (carried / drew / exhibited / brandished) a facsimile firearm, 2) the facsimile could reasonably be perceived as a real firearm, 3) (he/she) did so in the presence of a (peace officer / firefighter / emergency medical technician / paramedic) engaged in the performance of (his/her) duties, and 4) the defendant specifically intended to impede the (peace officer / firefighter / emergency medical technician / paramedic) from performing (his/her) duties.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of carrying or brandishing a facsimile firearm, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See definitions for machine gun, rifle, shotgun, pistol or revolver in the glossary.

## 8.2-20 Unlawful Discharge of Firearms -- § 53-203

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the unlawful discharge of a firearm. The statute defining this offense reads in pertinent part as follows:

a person is guilty of unlawful discharge of firearms when such person intentionally, negligently or carelessly discharges any firearm in such a manner as to be likely to cause bodily injury or death to persons or domestic animals, or the wanton destruction of property.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Discharged firearm

The first element is that the defendant intentionally, negligently or carelessly<sup>1</sup> discharged a firearm. A "firearm" is any weapon from which a shot is fired by the force of an explosion.<sup>2</sup>

<Insert appropriate mental state:>

- A person acts "intentionally" with respect to conduct when (he/she) intends to engage in such conduct. <See Intent: General, Instruction 2.3-1.>
- A person acts "negligently" when (he/she) fails to use reasonable care under the circumstances. Reasonable care is the care that a reasonably prudent person would use in the same circumstances.

### Element 2 - Likelihood of injury, death or destruction of property

The second element is that (he/she) discharged the firearm in a manner likely to cause bodily injury or death to person or domestic animals, or the wanton<sup>3</sup> destruction of property.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant intentionally, negligently or carelessly discharged a firearm in a manner likely to cause bodily injury or death to person or domestic animals, or the wanton destruction of property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the unlawful discharge of a firearm, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Carelessly and negligently are synonymous in ordinary usage. See Webster's New World College Dictionary ("careless" defined as "not paying enough attention . . . neglectful"; "negligent" defined as "neglectful; careless.")

<sup>2</sup> This statute does not incorporate the definition of "firearm" in General Statutes § 53a-3 (19), so the ordinary meaning of the word is used.

<sup>3</sup> Wanton is defined in the dictionary as "recklessly or arrogantly ignoring justice, decency, morality, etc." Webster's New World College Dictionary. In the civil context, "[t]he terms wanton and reckless in practice mean the same thing. . . . Both terms refer to highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent." (Citation omitted; internal quotation marks omitted.) *Belanger v. Village Pub I, Inc.*, 26 Conn. App. 509, 512-13 (1992).

## 8.2-21 Stealing a Firearm -- § 53a-212

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with stealing a firearm. The statute defining this offense reads in pertinent part as follows:

a person is guilty of stealing a firearm when, with intent to deprive another of his or her firearm or to appropriate the same to him- or herself or a third party, (he/she) wrongfully takes, obtains or withholds a firearm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Took, obtained, or withheld firearm**

The first element is that the defendant wrongfully (took / obtained / withheld) a firearm from another person. A "firearm" is any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged. The firearm must be operable to satisfy the requirements of this element.<sup>1</sup>

The word "wrongfully" means that the property was (taken / obtained / withheld) from the owner without any legal justification or excuse.

### **Element 2 - Intent**

The second element is that the defendant intended to permanently deprive that person of the firearm or to permanently appropriate the firearm to (himself / herself) or a third party. The defendant must have the specific intent to deprive the owner of the firearm or to appropriate it to (himself/herself) or a third person resulting in permanent loss or major diminution of value or benefit to the owner. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (took / obtained / withheld) a firearm from another person, and 2) the defendant intended to deprive that person of the firearm or to permanently appropriate the firearm to (himself / herself) or a third party.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of stealing a firearm, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> "Operability of the firearm is an essential element to establish a violation of § 53a-212." *State v. Roy*, 34 Conn. App. 751, 770 (1994).

***Commentary***

The focus of § 53-212 is "on the type of property stolen rather than the value of the property. . . . [I]t is incumbent on the state to prove as an element of the crime that the stolen instrumentality is a firearm." *State v. Roy*, supra, 34 Conn. App. 770. Stealing a firearm is a distinct crime from larceny. *Id.*, 772.

## 8.2-22 Criminal Use of Firearm or Electronic Defense Weapon -- § 53a-216

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal use of (a firearm / an electronic defense weapon). The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal use of (a firearm / an electronic defense weapon) when (he/she) commits any class A, B or C or unclassified felony and in the commission of such felony (he/she) uses or threatens the use of a pistol, revolver, machine gun, shotgun, rifle or other firearm or electronic defense weapon.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Committed a felony

The first element is that the defendant committed a Class A, B or C or unclassified felony. To prove this element, the state must have proved beyond a reasonable doubt that the defendant committed the crime of *<insert felony charged>* as charged in count \_\_\_. Proof of this element will depend on your deliberations pertaining to that count. If you find the defendant guilty of *<insert underlying crime>* in count \_\_\_, then this element will be proved.<sup>1</sup>

### Element 2 - With firearm or electronic defense weapon

The second element is that in the commission of such felony the defendant used or threatened the use of (a firearm / an electronic defense weapon). The words "use" and "threaten" have their ordinary meaning. *<Insert appropriate definition:>*

- "Firearm" is any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>2</sup>
- "Electronic defense weapon" is a weapon which by electronic impulse or current is capable of immobilizing a person temporarily, but is not capable of inflicting death or serious physical injury.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant committed a Class A, B or C or unclassified felony, and 2) in the commission of such felony the defendant used or threatened the use of *<insert type of weapon>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the criminal use of (a firearm / electronic defense weapon), then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> "No person shall be convicted of criminal use of a firearm or electronic defense weapon and the underlying felony upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information." General Statutes § 53a-216 (a).

<sup>2</sup> See definitions for machine gun, rifle, shotgun, pistol or revolver in the glossary.

## 8.2-23 Criminally Negligent Storage of a Firearm -- § 53a-217a

Revised to November 6, 2014

The defendant is charged [in count \_\_\_] with criminally negligent storage of a firearm. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminally negligent storage of a firearm when (he/she) improperly stores a firearm<sup>1</sup> and a (minor / resident of the premises who is ineligible to possess a firearm under state or federal law / resident of the premises who poses a risk of imminent personal injury to (himself/herself) or to other individuals)<sup>2</sup> obtains the firearm and causes the injury or death of (himself/herself) or any other person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Improperly stored firearm

The first element is that the defendant improperly stored a firearm. A "firearm" is any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon.<sup>3</sup>

Another statute provides that a person improperly stores a firearm when (he/she) stores any loaded firearm on any premises under (his/her) control if (he/she) knows or reasonably should know that a minor is likely to gain access to the firearm unless the firearm is kept in a securely locked box or other container or in a location which a reasonable person would believe to be secure or carries the firearm on (his/her) person or within such close proximity thereto that (he/she) can readily retrieve and use it as if (he/she) carried it on his person. *<Insert allegations of improper storage.>*<sup>4</sup>

To find that the defendant improperly stored firearms, you must find that the defendant was criminally negligent.<sup>5</sup> A person acts with "criminal negligence" with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. *<See Criminal Negligence, Instruction 2.3-5.>*

### Element 2 - Obtained by minor or resident

The second element is that, as a result of the improper storage, the firearm was obtained by:

- a minor. A minor is any person under sixteen years of age.
- resident of the premises who is ineligible to possess a firearm under state or federal law. A resident is someone who lives at a place, rather than being a guest or transient. It is alleged that *<insert name of person>* was a resident of the premises and was not eligible to possess a firearm because *<insert reason>*.
- resident of the premises who poses a risk of imminent personal injury to (himself/herself) or to other individuals). A resident is someone who lives at a place, rather than being a

guest or transient. It is alleged that <insert name of person> was a resident of the premises and posed a risk imminent personal injury to (himself/herself) or to other individuals because <insert reason>.

### **Element 3 - Injury or death**

The third element is that the (minor / resident) caused injury or death to (himself / herself) or another person with the firearm.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant improperly stored a firearm, 2) as a result of the improper storage, a (minor / resident of the premises who is ineligible to possess a firearm under state or federal law / resident of the premises who poses a risk of imminent personal injury to (himself/herself) or to other individuals) obtained the firearm, and 3) the (minor / resident) caused injury or death to (himself / herself) or another person with the firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the criminally negligent storage of a firearm, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The statute refers to § 29-37i, which is titled "Responsibilities re storage of loaded firearms."

<sup>2</sup> The provisions regarding certain residents of the premises were added by Public Act No. 13-3, § 56, effective October 1, 2013.

<sup>3</sup> See definitions for machine gun, rifle, shotgun, pistol or revolver in the glossary.

<sup>4</sup> General Statutes § 29-37i. "The most appropriate and efficient means to achieve the goal of restricting access to a loaded firearm depends on facts uniquely within the knowledge of the individual gun owner. The most obvious variables include the ages of children in the household, the physical layout of the home, and the availability of locked safes or closets. A high shelf in a closet may be a secure location when the only child in the household is a toddler, but when older children are present in the home, it may be necessary to use trigger locks and a locked container. Therefore, while the individual gun owner may reasonably determine what he or she must do to 'secure' a weapon and a jury that is privy to the relevant facts may do so as well, it would be virtually impossible for the legislature to explicitly define what 'secure' means for every situation. . . . It is appropriate and necessary to leave this determination to the finder of fact." (Citations omitted.) *State v. Wilchinski*, 242 Conn. 211, 228 (1997).

<sup>5</sup> *State v. Wilchinski*, supra, 242 Conn. 232.

### ***Commentary***

In *State v. Wilchinski*, supra, 242 Conn. 211, the Supreme Court rejected the defendant's claim that § 53a-217a was unconstitutionally void for vagueness.

Subsection (b) of the statute provides an exception if the "minor obtains the firearm as a result of an unlawful entry to any premises by any person." "[W]here exceptions to a

prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

## 8.2-24 Hunting while Intoxicated -- § 53-206d (b)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with hunting while intoxicated. The statute defining this offense prohibits a person from hunting while under the influence of (intoxicating liquor / any drug / both), or while impaired by the consumption of intoxicating liquor.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Hunted with a firearm**

The first element is that the defendant was engaged in hunting with a firearm. "Hunting" means pursuing, shooting, killing and capturing any bird, quadruped or reptile and attempting to pursue, shoot, kill and capture any bird, quadruped or reptile, whether such act results in taking or not, including any act of assistance to any other person in taking or attempting to take any such animal.<sup>1</sup>

### **Element 2 - While under the influence or impaired**

The second element is that the defendant *<insert as appropriate:>*

- was under the influence of (intoxicating liquor / any drug / both).
- was impaired by the consumption of intoxicating liquor.

*<Insert appropriate definition:>*

- A person shall be deemed under the influence when at the time of the alleged offense the person *<insert as appropriate:>*
  - is under the influence of (intoxicating liquor / any drug / both). A person is under the influence of (intoxicating liquor / any drug / both) when, as a result of (drinking such beverage / ingesting such drug / both) that person's mental, physical, or nervous processes have become so affected that (he/she) lacks to an appreciable degree the ability to function properly in relation to (his/her) activities, in this case hunting.<sup>2</sup>
  - has an elevated blood alcohol content. For the purposes of this subdivision, "elevated blood alcohol content" means (i) a ratio of alcohol in the blood of such person that is ten-hundredths of one per cent or more of alcohol, by weight, or (ii) if such person has been convicted of a violation of this subsection, a ratio of alcohol in the blood of such person that is seven-hundredths of one per cent or more of alcohol, by weight.<sup>3</sup>
- A person shall be deemed impaired when at the time of the alleged offense the ratio of alcohol in the blood of such person was more than seven-hundredths of one per cent of alcohol, by weight, but less than ten-hundredths of one per cent of alcohol, by weight.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was hunting, and 2) the defendant was (under the influence of (intoxicating liquor / drugs / both) / impaired by the consumption of intoxicating liquor).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of hunting while intoxicated, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See General Statutes § 26-1 (12).

<sup>2</sup> Definition of "under the influence" is derived from cases involving driving under the influence. See, e.g., *State v. Gordon*, 84 Conn. App. 519, 527 (2004).

<sup>3</sup> See General Statutes § 53-206d (b) (1). Note that the language of this statute does not conform to the standards provided in General Statutes § 14-227a, Driving Under the Influence, regarding blood alcohol content.

## 8.2-25 Sale or Transfer of Assault Weapon -- § 53-202b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with sale of an assault weapon. The statute defining this offense reads in pertinent part as follows:

a person is guilty of the sale or transfer of an assault weapon when such person, within this state, (distributes / transports or imports into this state / keeps for sale / offers or exposes for sale / gives away) any assault weapon.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### Element 1 - Sold or transferred assault weapon

The first element is that the defendant knowingly (distributed / transported or imported into this state / kept for sale / offered or exposed for sale / gave away) an assault weapon. "Assault weapon" is defined by statute and includes <insert type of assault weapon>.<sup>1</sup> The terms (distribute / transport / import / sale / give) have their ordinary meaning.

A person acts "knowingly" when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See Knowledge, Instruction 2.3-3.>

### Element 2 - Within Connecticut

The second element is that the (distribution / transportation or importation / keeping for sale / offering or exposing for sale / giving away) of the assault weapon took place within the state of Connecticut. This means that the defendant's conduct must have occurred within the state of Connecticut.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant (distributed / transported or imported into this state / kept for sale / offered or exposed for sale / gave away) an assault weapon within the state of Connecticut.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the sale or transfer of an assault weapon, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> "Assault weapon" is defined in § 53-202b to include specifically listed models of firearms as well as firearms not specifically listed that have certain characteristics. The instruction should be tailored to the type of assault weapon alleged in the case.

## *Commentary*

### *Sentence Enhancer*

Section 53-202b (a) (2) provides an enhanced penalty for transfer to a person under the age of eighteen. The jury must find this proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

### *Exceptions*

See General Statutes § 53-202b (b) for exceptions to culpability. "[W]here exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

## 8.2-26 Possession of Assault Weapon -- § 53-202c

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with possession of an assault weapon. The statute defining this offense imposes punishment on any person who, within this state, possesses any assault weapon.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### **Element 1 - Possessed assault weapon**

The first element is that the defendant knowingly possessed an assault weapon. "Assault weapon" is defined by statute and includes <insert type of assault weapon>. <sup>1</sup>

"Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it. <sup>2</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the firearm. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the firearm. <See Knowledge, Instruction 2.3-3.>

<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>

### **Element 2 - Within Connecticut**

The second element is that the possession took place within the state of Connecticut. The state must prove beyond a reasonable doubt that the assault weapon was physically located within Connecticut at the time the defendant possessed it.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant possessed an assault weapon within the state of Connecticut.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the possession of an assault weapon, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The term assault weapon is defined in § 53-202b to include specifically listed models of firearms as well as firearms not specifically listed that have certain characteristics. The instruction should be tailored to the type of assault weapon alleged in the case.

<sup>2</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

*Commentary*

See General Statutes § 53-202c (b) for exceptions to culpability. "[W]here exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

## 8.2-27 Transportation of Assault Weapon -- § 53-202f

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with illegal transporting of an assault weapon. The statute defining this offense reads in pertinent part as follows:

no person shall *<insert as appropriate:>*

- carry a loaded assault weapon concealed from public view.
- knowingly have, in any motor vehicle owned, operated, or occupied by (him/her) *<insert as appropriate:>*
  - a loaded assault weapon.
  - an unloaded assault weapon unless such weapon is kept in the trunk of such vehicle or in a case or other container which is inaccessible to the operator of or any passenger in such vehicle.

This statute prohibits the transportation of assault weapons that are possessed legally pursuant to a certificate of possession issued by the department of emergency services and public protection.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt that *<insert as appropriate:>*

- the defendant carried a loaded assault weapon concealed from public view.
- the defendant knowingly had a loaded assault weapon in a motor vehicle owned, operated or occupied by him/her.
- the defendant knowingly had an unloaded assault weapon in a motor vehicle owned, operated or occupied by him/her unless (a) such weapon was kept in the trunk of such vehicle or (b) such weapon was kept in a case or container that was inaccessible to the operator of or any passenger in such vehicle.

"Assault weapon" is defined by statute and includes *<insert type of assault weapon>*.<sup>1</sup>

[*<If allegations require knowledge: A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See Knowledge, Instruction 2.3-3.>*]

### Conclusion

In summary, the state must prove beyond a reasonable doubt *<summarize allegations>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the transportation of an assault weapon, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The term assault weapon is defined to include specifically listed models of firearms as well as firearms not specifically listed that have certain characteristics. The instruction should be tailored to the type of assault weapon alleged in the case.

***Commentary***

The word "carry" is not defined. In *State v. Hopes*, 26 Conn. App. 367, 374 (1992), the Appellate Court concluded, in the context of General Statutes § 29-35, carrying a pistol or revolver without a permit, that "asportation or movement is not a necessary element to establish a violation."

## 8.2-28 Affirmative Defense to Possession of Assault Weapon -- § 53-202o

Revised to November 6, 2014

The defendant has raised the affirmative defense that the possession of an assault weapon was not illegal and was authorized by law. The statute that authorizes possession of an assault weapon, provides in pertinent part as follows:

In any prosecution based on the possession by the defendant of a specified assault weapon, it shall be an affirmative defense that the defendant (1) in good faith purchased or otherwise obtained title to such specified assault weapon on or after October 1, 1993, and prior to May 8, 2002, in compliance with any state and federal laws concerning the purchase or transfer of firearms, (2) is not otherwise disqualified or prohibited from possessing such specified assault weapon, and (3) has been issued a certificate of possession for an assault weapon by the department of emergency services and public protection.

*<Insert Affirmative Defense, Instruction 2.9-1.>*

To establish this affirmative defense, the defendant must prove the following elements by a preponderance of the evidence:

### **Element 1 - Good faith acquisition**

The first element is that on or after October 1, 1993 and prior to May 8, 2002, the defendant, in good faith, purchased or acquired title to the specified assault weapon.

### **Element 2 - Acquisition complied with state and federal laws**

The second element is that the purchase or obtaining of title to the specified assault weapon was in compliance with any state and federal laws concerning the purchase and transfer of firearms.

### **Element 3 - Not disqualified from possession**

The third element is that the defendant is not otherwise disqualified or prohibited from possessing the specified assault weapon.

### **Element 4 - Possession in compliance with state law**

The fourth element is that (he/she) has possessed such weapon in compliance with state law. State law authorizes a person to possess an assault weapon provided that the person has been issued a certificate of possession by the department of emergency services and public protection, and further provided that the person possesses the assault weapon under the following conditions: *<insert as appropriate:>*

- at that person's residence, place of business or other property owned by that person, or on property owned by another with the owner's express permission.
- while on the premises of a target range of a public or private club or organization organized for the purposes of practicing shooting at targets.
- while on a target range which holds a regulatory or business license for the purpose of practicing shooting at that target range.

- while on the premises of a licensed shooting club.
- while attending any exhibition, display or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in or promotes education about firearms.
- while transporting the assault weapon between any of the places mentioned or to a licensed gun dealer for servicing or repair provided the assault weapon is transported as required by law.

**Conclusion**

*<Substitute for the concluding paragraph in the offense instruction.>* If you unanimously find that the state has failed to prove beyond a reasonable doubt any element of the crime of possession of an assault weapon, you shall find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved this affirmative defense by a preponderance of the evidence, you shall find the defendant not guilty. On the other hand, if you find that the defendant has not proved this affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

## 8.2-29 Criminal Possession of Body Armor -- § 53a-217d

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with criminal possession of body armor. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal possession of body armor when (he/she) possesses body armor and has been convicted of *<insert crime alleged>*.<sup>1</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Possessed body armor

The first element is that the defendant possessed body armor. "Body armor" means any material designed to be worn on the body and to provide bullet penetration resistance.

"Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>2</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the firearm. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the firearm. *<See Knowledge, Instruction 2.3-3.>*

*<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>*

### Element 2 - Prior conviction

The second element is that the defendant has previously been convicted of *<insert crime alleged>*.

"Convicted" means "having a judgment of conviction entered by a court of competent jurisdiction." This conviction must have occurred prior to the date it is alleged the defendant possessed the body armor.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant possessed body armor, and 2) (he/she) has previously been convicted of *<insert crime alleged>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the criminal possession of body armor, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Statute includes the following: (1) convicted of a capital felony, a class A felony, except a conviction under section 53a-196a, a class B felony, except a conviction under section 53a-86, 53a-122 or 53a-196b, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153 or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136, 53a-216, or (2) convicted as delinquent for the commission of a serious juvenile offense, as defined in section 46b-120.

<sup>2</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

## 8.2-30 Sale or Delivery of Body Armor -- § 53-341b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the sale or delivery of body armor. The statute defining this offense reads in pertinent part as follows:

no person, firm or corporation shall sell or deliver body armor to another person unless the transferee meets in person with the transferor to accomplish the sale or delivery.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sold or delivered body armor**

The first element is that the defendant sold or delivered body armor to another person. The words "sold" and "delivered" have their ordinary meaning. "Body armor" means any material designed to be worn on the body and to provide bullet penetration resistance.

### **Element 2 - Transfer not made in person**

The second element is that the transfer of the body armor was not made in person.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) sold or delivered body armor to another person, and 2) the transfer of the body armor was not made in person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the sale or delivery of body armor, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

The legislative history of this statute indicates that this section was intended to prohibit mail order and Internet sales, which would make it easier for convicted felons to obtain bullet proof vests. The same act criminalized the possession of body armor by any person convicted of certain crimes. See Criminal Possession of Body Armor, Instruction 8.2-29.

## 8.2-31 Manufacture of Bombs -- § 53-80a

Revised to December 1, 2007 (modified November 6, 2014)

The defendant is charged [in count \_\_\_] with the manufacture of bombs. The statute defining this offense reads in pertinent part as follows:

any person, other than one engaged in the manufacture of firearms or explosives or incendiary devices for lawful purposes, who fabricates in any manner, any type of an explosive, incendiary or other device designed to be dropped, hurled or set in place to be exploded by a timing device, shall be guilty.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Fabricated incendiary device**

The first element is that the defendant fabricated<sup>1</sup> an explosive, incendiary or other device designed to be dropped, hurled, or set in place to be exploded by a timing device. The term "explosive or incendiary device" means (A) dynamite and all other forms of high explosives, (B) any explosive bomb, grenade, missile or similar device, and (C) any incendiary bomb or grenade, fire bomb or similar device, including any device which (i) consists of or includes a breakable container which contains a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and (ii) can be carried or thrown by an individual.

### **Element 2 - No lawful purpose**

The second element is that the defendant was not engaged in the manufacture of the device for lawful purposes.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant fabricated *<insert type of device alleged>*, and 2) that (he/she) was not engaged in the lawful manufacture of such devices.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the manufacture of bombs, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The phrase "in any manner" modified "fabricate" to encompass a wide range of actions within its definition. *State v. Jamison*, 152 Conn. 753, 759-60 (2014) (gluing pennies onto an existing explosive device constitutes fabricating a bomb).

## 8.2-32 Firearms Trafficking -- § 53-202aa

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with firearms trafficking. The statute defining this offense reads in pertinent part as follows:

a person is guilty of firearms trafficking if such person, knowingly and intentionally, directly or indirectly, causes one or more firearms that such person owns, is in possession of or is in control of to come into the possession of or control of another person whom such person knows or has reason to believe is prohibited from owning or possessing any firearm under state or federal law.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Owned, possessed or controlled firearms**

The first element is that the defendant owned, possessed or controlled firearms. "Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged. You must find that the firearm was operable at the time of the incident.

"Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it.<sup>1</sup>

Possession also requires that the defendant knew that (he/she) was in possession of the firearm. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the firearm. <See Knowledge, Instruction 2.3-3.>

<If some form of constructive possession is alleged, see Possession, Instruction 2.11-1.>

### **Element 2 - Caused to come into another's possession or control**

The second element is that the defendant caused the firearms to come into the possession of or control of another person, <identify other person>. This means that the defendant did something that, either directly or indirectly, resulted in <identify other person> coming into the possession or control of the firearms.

### **Element 3 - Person prohibited from owning or possessing firearms**

The third element is that the defendant knew or had reason to believe that <identify other person> was prohibited from purchasing or otherwise receiving a firearm because (he/she) did not have a valid permit. [A person acts "knowingly" with respect to conduct or to a circumstance when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists. <See Knowledge, Instruction 2.3-3.>]

**Element 4 - Intent**

The fourth element is that the defendant had the specific intent that *<identify other person>* would come into possession or control of the firearms. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) owned, possessed, or controlled firearms, 2) caused those firearms to come into the possession or control of *<identify other person>*, 3) knew that *<identify other person>* was prohibited from owning or possessing any firearm, and 4) specifically intended that *<identify other person>* would come into possession or control of the firearms.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of firearms trafficking, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Ascertain from counsel what form of possession is alleged. The definition should be narrowly tailored to the allegations.

***Commentary******Sentence Enhancer***

Section 53-202aa provides a sentence enhancement if more than 5 firearms are involved, if the offense was committed prior to October 1, 2013. The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## **8.3 MOTOR VEHICLES**

**8.3-1 Driving Under the Influence -- § 14-227a**

**8.3-2 Driving Under the Influence, Under 21  
Years Old -- § 14-227g**

**8.3-3 Operation while Registration or License is  
Refused, Suspended or Revoked -- § 14-215  
(a) and (c)**

**8.3-4 Evading Responsibility -- § 14-224**

**8.3-5 Drinking while Operating Motor Vehicle --  
§ 53a-213**

**8.3-6 Illegal Sale or Possession of Master Car  
Key -- § 53-142a**

**8.3-7 Reckless Driving -- § 14-222**

**8.3-8 Operation without an Ignition Interlock  
Device -- § 14-215 (c)**

## 8.3-1 Driving Under the Influence -- § 14-227a

Revised to March 25, 2015

The defendant is charged [in count \_\_\_] with operating a motor vehicle while under the influence of (intoxicating liquor / any drug / or both).<sup>1</sup> The statute defining this offense reads in pertinent part as follows:

no person shall operate a motor vehicle while under the influence of (intoxicating liquor / any drug / both). A person commits the offense of operating a motor vehicle while under the influence of (intoxicating liquor / any drug / both) if such person operates a motor vehicle <insert appropriate subsection:>

- § 14-227a (a) (1): while under the influence of (intoxicating liquor / any drug / both).
- § 14-227a (a) (2): while such person has an elevated blood alcohol content.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### Element 1 - Operated a motor vehicle

The first element is that the defendant was operating a motor vehicle<sup>2</sup> at the time and place alleged. A person "operates" a motor vehicle within the meaning of the statute when, while in the vehicle, such person intentionally does any act or makes use of any mechanical or electrical agency that alone, or in sequence, will set in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. <See Intent: General, Instruction 2.3-1.><sup>3</sup>

### Element 2 - Under the influence / Elevated BAC

The second element is that at the time the defendant operated the motor vehicle, (he/she) <insert as appropriate:>

- § 14-227a (a) (1): was under the influence of (intoxicating liquor / any drug / or both). A person is under the influence of (intoxicating liquor / any drug / or both) when as a result of (drinking such beverage / ingesting such drug / or both) that person's mental, physical, or nervous processes have become so affected that (he/she) lacks to an appreciable degree the ability to function properly in relation to the operation of (his/her) motor vehicle.<sup>4</sup>

The person's physical or mental capabilities must have been impaired to such a degree that (he/she) no longer has the ability to drive a vehicle with the caution characteristic of a sober person of ordinary prudence, under the same or similar circumstances. [<If appropriate:> If you find that the defendant was operating a vehicle under the influence of an intoxicating liquor, it is no defense that there was some other cause that also tended to impair the defendant's ability to exercise the required caution.] Evidence of the manner in which a vehicle was operated is not determinative of whether the defendant was operating the vehicle under the influence of (an intoxicating beverage / a drug / or both). It is, however, a factor to be considered in light of all the proven surrounding circumstances in deciding whether the defendant was or was not under the influence.<sup>5</sup>

- **§ 14-227a (a) (2):** had an elevated blood alcohol content. "Elevated blood alcohol content" means a ratio of alcohol in the blood that is (eight-hundredths / four-hundredths) of one percent or more of alcohol, by weight.<sup>6</sup> The chemical analysis of the defendant's (blood / breath / urine) that was presented as evidence may be used as evidence of the defendant's blood alcohol content at the time of the alleged offense. This means that you may find, but are not required to, that the defendant's blood alcohol content at the time of the alleged offense was the same as at the time the test was administered.<sup>7</sup>

[<If applicable:> Evidence of the defendant's refusal to submit to a blood, breath, or urine test has been introduced. If you find that the defendant did refuse to submit to such a test, you may make any reasonable inference that follows from that fact.]<sup>8</sup>

[<If charges include both subsections:> In deciding on your verdict as to the count \_\_, which alleges the operation of a motor vehicle while under the influence of intoxicating liquor, you cannot consider the results of any chemical tests from the Intoxilyzer as evidence of the defendant's guilt. That evidence was offered for a limited purpose only and is admissible only with respect to the allegations contained in the operating with an elevated blood alcohol content as found in count \_\_ of the information.]<sup>9</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was operating a motor vehicle at the time and place alleged, and 2) (he/she) (was under the influence of (intoxicating liquor / any drug / or both) / had an elevated blood alcohol content).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of driving while under the influence, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If the defendant is not charged with being under the influence of drugs, then that part of the statute should be omitted from the jury instruction. *State v. Tryon*, 145 Conn. 304, 306-307 (1958); see also *State v. Coughlin*, 61 Conn. App. 90, 94-96 (2000), cert. denied, 255 Conn. 934 (2001) (court properly gave limiting instruction to the jury that the case did not involve cocaine and that the jurors could not consider anything about the drug when deliberating in order to negate any potentially adverse effect of a report that was admitted and showed trace amounts of cocaine in the defendant's blood).

<sup>2</sup> "Motor vehicle" includes a snowmobile and an all-terrain vehicle, as those terms are defined in § 14-379. General Statutes § 14-227a (a).

<sup>3</sup> Operating a motor vehicle while under the influence of intoxicating liquor is a general intent crime. *State v. Borrelli*, 94 Conn. App. 849, 859 (2006) (defendant's involuntary intoxication insufficient to negate general intent requirement). In addition, there is no requirement that the defendant knew or should have known that he or she had ingested an intoxicant. *Id.*, 860.

<sup>4</sup> *State v. Gordon*, 84 Conn. App. 519, 527 (2004); *State v. Sanko*, 62 Conn. App. 34, 41, cert. denied, 256 Conn. 905 (2001); *State v. Andrews*, 108 Conn. 209, 216 (1928).

<sup>5</sup> If there has been evidence of the defendant's performance on field sobriety tests, the court may wish to tailor this part of the instruction. See *State v. Kelley*, 95 Conn. App. 423, cert. denied, 279 Conn. 906 (2006).

<sup>6</sup> Effective October 1, 2009, if a person is operating a commercial motor vehicle, "elevated blood alcohol content" means a ratio of alcohol in the blood that is four-hundredths of one percent or more of alcohol, by weight. See the definition of commercial motor vehicle in the Glossary and instruct on the relevant portions of it.

<sup>7</sup> See General Statutes § 14-227a (b) (formerly (c)); *State v. Gallichio*, 71 Conn. App. 179, 183-89 (2002); *State v. Nokes*, 44 Conn. App. 40, 44-45 (1996); *State v. Korhn*, 41 Conn. App. 874, 880-81, cert. denied, 239 Conn. 910 (1996). The statute provides an exception to this rule: "if the results of the additional test indicate that the ratio of alcohol in the blood of such defendant is twelve-hundredths of one per cent or less of alcohol, by weight, and is higher than the results of the first test, evidence shall be presented that demonstrates that the test results and the analysis thereof accurately indicate the blood alcohol content at the time of the alleged offense." See also *State v. Pilotti*, 99 Conn. App. 563, cert. denied, 282 Conn. 903 (2007) (discussing evidentiary requirements involving breath tests).

<sup>8</sup> General Statutes § 14-227a (e) requires that a jury be instructed as to any inference that may or may not be drawn in the event there is evidence that the defendant refused to submit to a blood, breath, or urine test and there has been compliance with § 14-227b (b). See *State v. McCarthy*, 63 Conn. App. 433, 437-39, cert. denied, 258 Conn. 904 (2001) (instruction substantially complied with the statutory language of General Statutes § 14-227a (f), despite its failure to state that it "may or may not" draw a negative inference); *State v. Corbeil*, 41 Conn. App. 7, 19, appeal dismissed, 237 Conn. 919 (1996) ("refusing" to take a breath test may be accomplished by a failure to cooperate, as well as by an expressed refusal); *State v. Barlow*, 30 Conn. App. 36, 42-44 (1993) (whether the defendant refused to take the test is an issue of fact for the jury). In *State v. Weed*, 118 Conn. App. 654, 664-65 (2009), the Appellate Court concluded, as a matter of first impression, that evidence that the defendant refused to submit to a breath test provided a sufficient basis for a consciousness of guilt instruction.

<sup>9</sup> General Statutes § 14-227a (c) "provides that evidence of the amount of alcohol in the defendant's blood as shown by a chemical analysis of the defendant's breath is admissible with respect to the behavioral subdivision only at the request of the defendant." (Emphasis added.) *State v. Cooper*, 38 Conn. App. 661, 673, cert. denied, 235 Conn. 908 (1995), cert. denied, 517 U.S. 1214, 116 S. Ct. 1837, 134 L. Ed. 2d 940 (1996). "Substantial defective compliance with that statutory provision requires reversal even if no particular prejudice is shown and even if there is overwhelming evidence of guilt." (Internal quotation marks omitted.) *Id.*, 673; see also *State v. Longo*, 106 Conn. App. 701, 710 (2008) (trial court properly instructed jury regarding the use of chemical evidence when defendant charged under both subsections and issued appropriate limiting instruction); *State v. Gracia*, 51 Conn. App. 4, 14-15 (1998) (same).

### ***Commentary***

There are two ways by which a defendant can be charged with violating General Statutes § 14-227a (a): subdivision (1) of subsection (a) describes the "behavioral" violation; subdivision (2) of subsection (a) describes the "per se" violation. *State v. Gilbert*, 30 Conn. App. 428, 437-38 (1993), *aff'd*, 229 Conn. 228 (1994). Because the two subsections provide alternative methods of proof for the same offense, it would be a double jeopardy violation to punish a defendant under both subsections. *State v. Re*, 111 Conn. App. 466, 473 (2008), *cert. denied*, 290 Conn. 908 (2009). If these two ways of committing the offense are charged in the same count, the committee recommends giving a unanimity instruction that the jury must unanimously agree as to the way the defendant committed the offense.

### ***Subsequent offenders***

General Statutes § 14-227a (g) provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 14-227a within ten years of the current violation. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See *Subsequent Offenders*, Instruction 2.12-2.

In *State v. Burns*, 236 Conn. 18 (1996), the Supreme Court held that the language of § 14-227a ("for conviction of a third violation within 5 years [now 10] after a prior conviction for the same offense") means the third violation within the time period, not the third conviction.

## 8.3-2 Driving Under the Influence, Under 21 Years Old -- § 14-227g

Revised to April 23, 2010

The defendant is charged [in count \_\_\_] with operating a motor vehicle with an elevated blood alcohol level. The statute defining this offense reads in pertinent part as follows:

no person who is less than twenty-one years of age shall operate a motor vehicle while the ratio of alcohol in the blood of such person is two-hundredths of one per cent or more of alcohol, by weight.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### **Element 1 - Under 21 years of age**

The first element is that the defendant, at the time of the incident, was under 21 years of age.

### **Element 2 - Operated a motor vehicle**

The second element is that the defendant was operating a motor vehicle<sup>1</sup> at the time and place alleged. A person "operates" a motor vehicle within the meaning of the statute when, while in the vehicle, such person intentionally does any act or makes use of any mechanical or electrical agency that alone, or in sequence, will set in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. <See *Intent: General, Instruction 2.3-1.*><sup>2</sup>

### **Element 3 - Elevated BAC**

The third element is that at the time the defendant operated the motor vehicle, (he/she) had an elevated blood alcohol content. "Elevated blood alcohol content" is defined as "a ratio of alcohol in the blood of such person that is two-hundredths of one percent or more of alcohol, by weight." The chemical analysis of the defendant's (blood / breath / urine) that was presented as evidence may be used as evidence of the defendant's blood alcohol content at the time of the alleged offense. This means that you may find, but are not required to, that the defendant's blood alcohol content at the time of the alleged offense was the same as at the time the test was administered.<sup>3</sup>

[<If applicable:> Evidence of the defendant's refusal to submit to a blood, breath, or urine test has been introduced. If you find that the defendant did refuse to submit to such a test, you may make any reasonable inference that follows from that fact.]<sup>4</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was under 21 years of age, 2) (he/she) was operating a motor vehicle at the time and place alleged, and 2) (he/she) had an elevated blood alcohol content.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of driving with an elevated blood alcohol level, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> "Motor vehicle" includes a snowmobile and all-terrain vehicle, as those terms are defined in § 14-379. General Statutes § 14-227a (a).

<sup>2</sup> Operating a motor vehicle while under the influence of intoxicating liquor is a general intent crime. *State v. Borrelli*, 94 Conn. App. 849, 859 (2006) (defendant's involuntary intoxication insufficient to negate general intent requirement). In addition, there is no requirement that the defendant knew or should have known that he/she had ingested an intoxicant. *Id.*, 860.

<sup>3</sup> See General Statutes § 14-227a (b) (formerly (c)), made applicable to § 14-227g (a) by § 14-227g (c); *State v. Gallichio*, 71 Conn. App. 179, 183-89 (2002); *State v. Nokes*, 44 Conn. App. 40, 44-45 (1996); *State v. Korhn*, 41 Conn. App. 874, 880-81, cert. denied, 239 Conn. 910 (1996). The statute provides an exception to this rule: "if the results of the additional test indicate that the ratio of alcohol in the blood of such defendant is twelve-hundredths of one per cent or less of alcohol, by weight, and is higher than the results of the first test, evidence shall be presented that demonstrates that the test results and the analysis thereof accurately indicate the blood alcohol content at the time of the alleged offense."

<sup>4</sup> General Statutes § 14-227a (f), made applicable to § 14-227g (a) by § 14-227g (c), requires that a jury be instructed as to any inference that may or may not be drawn in the event there is evidence that the defendant refused to submit to a blood, breath, or urine test and there has been compliance with § 14-227b (b). See *State v. McCarthy*, 63 Conn. App. 433, 437-39, cert. denied, 258 Conn. 904 (2001) (instruction substantially complied with the statutory language of General Statutes § 14-227a (f), despite its failure to state that it "may or may not" draw a negative inference); *State v. Corbeil*, 41 Conn. App. 7, 19, cert. granted on other grounds and appeal dismissed, 237 Conn. 919 (1996) ("refusing" to take a breath test may be accomplished by a failure to cooperate, as well as by an expressed refusal); *State v. Barlow*, 30 Conn. App. 36, 42-44 (1993) (whether the defendant refused to take the test is an issue of fact for the jury).

### ***Commentary***

The requirement of operation on a public highway was removed from § 14-227g by Public Acts 2009, No. 09-187, § 4, effective October 1, 2009.

### ***Subsequent offenders***

General Statutes § 14-227a (g), applicable pursuant to § 14-227g (c), provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 14-227g within ten years of the current violation. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## 8.3-3 Operation while Registration or License is Refused, Suspended or Revoked -- § 14-215 (a) and (c)

Revised to December 1, 2007 (modified November 6, 2014)

**Note:** Section 14-215 (a) has two parts: driving when one's license has been refused, suspended or revoked, and driving a motor vehicle for which registration has been refused, suspended or revoked. Section 14-215 (c) creates a separate offense for violating subsection (a) by driving when one's license has been suspended or revoked "on account of" a violation of § 14-227a, § 53a-56b, § 53a-60d, or § 14-227b. The first two elements are the same for both offenses. The third element applies only to a violation of § 14-215 (c).<sup>1</sup>

**See Commentary for discussion of other statutes that may be implicated when a person operates a motor vehicle without a valid license.**

The defendant is charged [in count \_\_\_] with operating a motor vehicle while (the motor vehicle's registration / (his/her) operator's license) has been (refused / suspended / revoked). The statute defining this offense reads in pertinent part as follows: *<insert as appropriate:>*

- no person to whom an operator's license has been refused, or whose operator's license or right to operate a motor vehicle in this state has been suspended or revoked, shall operate any motor vehicle during the period of such refusal, suspension or revocation.
- no person shall operate or cause to be operated any motor vehicle, the registration of which has been refused, suspended or revoked, or any motor vehicle, the right to operate which has been suspended or revoked.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### **Element 1 - Operated a motor vehicle**

The first element is that the defendant (operated / caused to be operated)<sup>2</sup> a motor vehicle. A "motor vehicle" means all vehicles used on a public highway and include automobiles.<sup>3</sup> *<Insert as appropriate:>*

- A person "operates" a motor vehicle within the meaning of the statute when, while in the vehicle, such person intentionally does any act or makes use of any mechanical or electrical agency that alone, or in sequence, will set in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. *<See Intent: General, Instruction 2.3-1.>*
- The phrase "cause to be operated" has its ordinary meaning. It means that the defendant's conduct was a substantial factor in bringing about the operation of the vehicle. *<Insert specific allegations.>*

### **Element 2 - Without license or registration**

The second element is that such operation occurred during a period when *<insert as appropriate:>*

- the defendant's license was refused, or (his/her) right to operate motor vehicle in Connecticut had been suspended or revoked.
- the registration for the motor vehicle had been refused, suspended or revoked, or the right to operate such motor vehicle was suspended or revoked.

Refuse, suspend and revoke have their ordinary meaning.

The law requires that the commissioner of motor vehicle provide notice of the (suspension / revocation) of the license. Notice is deemed to be sufficient if written notice of the (suspension / revocation) was forwarded by the commissioner of motor vehicles via bulk certified mail addressed to the person, whose right to operate was to be (suspended / revoked), at the last known address of the person as shown by the records of the commissioner. The law does not require that the state prove personal service of a notice of (suspension / revocation) or that the person actually received the notice or that the commissioner received a return receipt. Rather, compliance by the commissioner with the requirements of the law is all that is required to prove that the defendant was notified of the (suspension / revocation).

[<Use only if defendant is charged under § 14-215 (c):>

**Element 3 - Reason for suspension**

The third element is that the defendant's license was (suspended / revoked) on account of a [second / third or subsequent] violation of (§ 14-227a / § 53a-56b / § 53a-60d / § 14-227b). <Review evidence of prior conviction.>]

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (operated / caused to be operated) a motor vehicle, [and] 2) at the time <insert specific allegations in regard to the license or registration> [and 3) the defendant's license had been (suspended / revoked) on account of a violation of <insert specific allegation>].

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of operating a motor vehicle while <insert specific violation alleged>, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

<sup>1</sup> See *State v. Cook*, 36 Conn. App. 710, 715 (1995).

<sup>2</sup> The phrase "caused to be operated" applies only to the operation of a motor vehicle for which the registration has been refused, suspended or revoked.

<sup>3</sup> It also includes all-terrain vehicles. *State v. Knybel*, 281 Conn. 707 (2007) (applying the definition if § 14-212 (5)).

**Commentary**

Proof that the defendant's operator's license was suspended requires proof that the commissioner complied with § 14-111 (a), which does not require personal service of a notice of suspension. "The requirements of § 14-111 (a) were satisfied by a showing of competent

evidence that notice of the suspension was mailed to the defendant at his last known address as indicated by the records of the commissioner." *State v. Torma*, 21 Conn. App. 496, 501 (1990). Actual notice of the suspension is not required. *Id.*, 505. The defendant's actual knowledge of the suspension is not an element. *State v. Swain*, 245 Conn. 442 (1998).

It does not matter whether the motor vehicle was being operated on public or private property. *State v. Hackett*, 72 Conn. App. 127, cert. denied, 262 Conn. 904 (2002) (court improperly charged the jury that defendant must have been operating the vehicle in a parking area for 10 or more cars). Ownership of the vehicle is also irrelevant to this offense. *State v. Ragland*, 4 Conn. Cir. Ct. 424 (1967).

"In order to establish a violation of § 14-215 (a), the state must prove two elements: (1) that the defendant was operating a motor vehicle; and (2) that the defendant's license or operating privileges were under suspension at the time. . . . The only additional element required to prove a violation of subsection (c) is the requirement that the suspension at issue be on account of a violation of one of our statutes prohibiting the operation of motor vehicles by intoxicated operators." (Citation omitted; internal quotation marks omitted.) *State v. Cook*, 36 Conn. App. 710, 715 (1995).

### ***Affirmative defense***

That the defendant was operating the vehicle within the parameters of a work permit issued pursuant to § 14-37a is an affirmative defense which the defendant must prove by a preponderance of the evidence. *State v. Valinski*, 254 Conn. 107 (2000); see also *State v. Davidson*, 57 Conn. App. 541, 548 (2000) (the penalties provided in § 14-37a for operating a motor vehicle outside the scope of the permit do not preclude a conviction under § 14-215).

### ***Subsequent offenders***

General Statutes § 14-215 (b) and (c) provides for an enhanced sentence if the defendant has certain prior convictions. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

### ***Lesser included offenses***

Section 14-215 (a) is a lesser included offense of § 14-215 (c). *State v. Cook*, supra, 36 Conn. App. 710; *State v. Jacobsen*, 31 Conn. App. 797 (1993), aff'd, 229 Conn. 824 (1994).

### ***Other statutes***

If a person's license has been suspended for a definite period of time, once that period ends, the person is required to apply for reinstatement of the license. Operating a motor vehicle after the period of suspension has ended but without applying for reinstatement is punishable under § 14-215b. See *State v. Rodriguez*, 151 Conn. App. 120 (2014), for a discussion distinguishing the two.

If a person's license has been suspended under § 14-140, operating during that suspension is punishable under § 14-215a

## 8.3-4 Evading Responsibility -- § 14-224

Revised to November 6, 2014

The defendant is charged [in count \_\_\_] with evading responsibility in the operation of a motor vehicle. The statute defining this offense reads in pertinent as follows:

each person operating a motor vehicle who is knowingly involved in an accident which *<insert appropriate subsection:>*

- § 14-224 (a): results in the death of any other person
- § 14-224 (b) (1): causes serious physical injury to any other person
- § 14-224 (b) (2): causes physical injury to any other person
- § 14-224 (b) (3): causes injury or damage to property

shall at once stop and render such assistance as may be needed and shall give (his/her) name, address and operator's license number and registration number to (the person injured / any officer or witness to the accident / the owner of the property).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt: <sup>1</sup>

### **Element 1 - Operated a motor vehicle**

The first element is that the defendant operated a motor vehicle. "Motor vehicle" means all vehicles used on a public highway and includes an automobile.

A person "operates" a motor vehicle within the meaning of the statute when, while in the vehicle, such person intentionally does any act or makes use of any mechanical or electrical agency that alone, or in sequence, will set in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. *<See Intent: General, Instruction 2.3-1.>*

### **Element 2 - Knowingly involved in an accident**

The second element is that the defendant was knowingly involved in an accident. It is only necessary that the state prove that there had been an accident and the defendant knew of this accident. It is not necessary that the state prove that the defendant had knowledge of any resulting (injury to a person / injury or damage to property).<sup>2</sup>

*<See Knowledge, Instruction 2.3-3.>*

### **Element 3 - Caused injury to person or damage to property**

The third element is that the accident caused (death / serious physical injury to a person / physical injury to a person / injury or damage to property). This means that the (death / physical injury / injury or damage to property) was the result of the accident. *<Insert appropriate definitions:>*

- "Physical injury" means impairment of physical condition or pain.
- "Serious physical injury" is something more serious than mere physical injury. It is more than a minor or superficial injury. It is defined by statute as "physical injury that

creates a substantial risk of death, or that causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

#### **Element 4 - Failed to stop, render assistance and provide information**

The fourth element is that the defendant did not stop at once and render assistance as needed and did not give (his/her) name, address, operator's license number and registration number to either the person injured, the owner of the property, a witness to the accident or an officer. If for any reason or cause, the defendant was unable to provide the required information at the scene of the accident, the law requires (him/her) to immediately report the accident to a law enforcement officer or at the nearest police station.<sup>3</sup>

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant operated a motor vehicle, 2) (he/she) knew that (he/she) had been involved in an accident, 3) the accident caused (death / serious physical injury to a person / physical injury to a person / injury or damage to property), and 4) the defendant did not stop at once and render assistance as needed and did not give (his/her) name, address, operator's license number and registration number to either the person injured, the owner of the property, a witness to the accident or an officer.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of evading responsibility, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> For a discussion of the elements, see *State v. Goodspeed*, 107 Conn. App. 717, 725-29, cert. denied, 287 Conn. 920 (2008); *State v. Rosario*, 81 Conn. App. 621, 634, cert. denied, 268 Conn. 923 (2004); see also *State v. Perkins*, 271 Conn. 218, 258 n.37 (2004).

<sup>2</sup> See *State v. Johnson*, 227 Conn. 534, 545 (1993).

<sup>3</sup> The statute provides that a person may provide the necessary information to a law enforcement officer at a location away from the scene of the accident if he or she is "unable for any reason or cause" to do so at the scene. This does not relieve a person of the duty to stop at once and render assistance. *State v. Rosario*, supra, 81 Conn. App. 627. "The essence of the offense of evading responsibility is the failure of the driver to stop and render aid." *Id.*, 631. The Court in *Rosario* noted that there may be situations in which "the operator's emotional state and subsequent flight from the scene are grounded in facts that could excuse his failure to stop." *Id.*, 628-29 n.4. If the defendant claims that he or she left the scene of the accident in order to report the accident, the court may want to emphasize in the discussion of this element that being unable to fulfill the reporting requirements at the scene of the accident does not justify a failure to stop and render assistance. See also *State v. Lawson*, 99 Conn. App. 233, 243-46, cert. denied, 282 Conn. 901 (2007) (court's instruction accurately defined the requirements of the statute).

#### ***Commentary***

It is immaterial whether the defendant was at fault for the accident. *State v. Richter*, 3 Conn. Cir. Ct. 99, 101 (1964). This statute applies regardless of whether the accident occurred on public or private property. *State v. Tuckus*, 4 Conn. Cir. Ct. 495, 500 (1967).

See General Statutes § 14-107 (b), which provides that "[w]henver there occurs a violation of section . . . 14-224 . . . proof of the registration number of any motor vehicle therein concerned shall be prima facie evidence in any criminal action . . . that the owner was the operator thereof, except in the case of a leased or rented motor vehicle, such proof shall be prima facie evidence in any criminal action that the lessee was the operator thereof."

### ***Subsequent offenders***

General Statutes § 14-224 (g) provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 14-224. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## 8.3-5 Drinking while Operating Motor Vehicle -- § 53a-213

Revised to May 10, 2012

The defendant is charged [in count \_\_\_] with drinking while operating a motor vehicle. The statute defining this offense reads in pertinent part as follows:

a person is guilty of drinking while operating a motor vehicle when (he/she) drinks any alcoholic liquor while operating a motor vehicle <insert as appropriate:>

- upon any public highway of the state.
- upon any road of a specially chartered municipal association or district, a purpose of which is the construction and maintenance of roads and sidewalks.
- in any parking area for ten cars or more.
- upon any private road on which a speed limit has been established.
- upon any school property.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Operated a motor vehicle**

The first element is that the defendant operated a motor vehicle. A "motor vehicle" includes any vehicle used on a public highway.<sup>1</sup>

A person "operates" a motor vehicle within the meaning of the statute when, while in the vehicle, such person intentionally does any act or makes use of any mechanical or electrical agency that alone, or in sequence, will set in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. <See Intent: General, Instruction 2.3-1.>

### **Element 2 - On certain roadways**

The second element is that the defendant was operating the motor vehicle <insert as appropriate:>

- upon any public highway of the state. This includes any state or other public highway, road, street, avenue, alley, driveway, parkway or place, under the control of the state or any political subdivision of the state, opened to the public for travel or other use.<sup>2</sup>
- upon any road of a specially chartered municipal association or district, a purpose of which is the construction and maintenance of roads and sidewalks.<sup>3</sup>
- in any parking area for ten cars or more. "Parking area" includes lots, areas or other accommodations for the parking of motor vehicles off the street or highway and open to public use with or without charge.<sup>4</sup>
- upon any private road on which a speed limit has been established.<sup>5</sup>
- any school property.

### **Element 3 - While drinking alcohol**

The third element is that while operating a motor vehicle, the defendant drank alcoholic liquor. "Alcoholic liquor" is defined by statute and includes alcohol, beer, spirits and wine and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being for beverage purposes. The definition does not apply to any liquid or solid containing less than one-half of one per cent of alcohol by volume.<sup>2</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant operated a motor vehicle, 2) on <insert alleged location>, and 3) (he/she) drank alcoholic liquor while operating the motor vehicle.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of drinking while operating a motor vehicle, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 14-212 (5).

<sup>2</sup> General Statutes § 14-212 (1) adopts the definition of "highway" in General Statutes § 14-1 (39). "The plain meaning of the word 'highway' is 'a main road or thoroughfare; hence, a road or way open to the use of the public.'" (Internal quotation marks omitted.) *State v. Harrison*, 30 Conn. App. 108, 118 (1993). Thus, "[t]he expression 'private highway' is a misnomer and 'public highway' is tautology." *Stavola v. Palmer*, 136 Conn. 670, 684 (1950). The dictionary definition of highway is "any road freely open to everyone; public road."

<sup>3</sup> Municipalities may charter municipal associations or special districts for various purposes, one of which is the construction and maintenance of roads and sidewalks. See General Statutes § 7-326.

<sup>4</sup> General Statutes § 14-212 (6).

<sup>5</sup> The speed limit on a private road is established pursuant to General Statutes § 14-218a.

## 8.3-6 Illegal Sale or Possession of Master Car Key -- § 53-142a

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with illegal (sale / possession) of a master car key. The statute defining this offense imposes punishment on *<insert as appropriate:>*

- any person who makes and sells to anyone other than a new car dealer, a person actually engaged in the trade of locksmith, a law enforcement agency, loan institution which finances the purchase of motor vehicles any motor vehicle master car key.
- any person other than one engaged in the manufacture of such keys as a bona fide business or other than one to whom the sale of such a key is authorized by this section who has a motor vehicle master car key in (his/her) possession.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sold or possessed a master car key**

The first element is that the defendant (made and sold / possessed) a motor vehicle master car key. A motor vehicle master car key is a key which can be used to open and operate multiple motor vehicles. "Motor vehicle" has its ordinary meaning and includes an automobile.

### **Element 2 - Not authorized**

*<Insert as appropriate:>*

- The second element is that the defendant sold the master car key to *<insert name of purchaser>* and that (person / agency) was not a new car dealer, a person actually engaged in the trade of locksmith, a law enforcement agency, or a loan institution which finances the purchase of motor vehicles.
- The second element is that at the time of such possession the defendant was not engaged in the manufacture of such keys as a bona fide business or was not a new car dealer licensed under Connecticut law or was not an person actually engaged in the trade of locksmith or was not a law enforcement agent or was not a loan institution that finances the purchase of motor vehicles.

"Possession" means either having the (substance / object) on one's person or otherwise having control over the (substance / object), that is, knowing where it is and being able to access it. Possession also requires that the defendant knew that (he/she) was in possession of the master car key. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that (he/she) was in possession of the master car key. *<See Knowledge, Instruction 2.3-3.>* *<See Possession, Instruction 2.11-1.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (made and sold / possessed) a motor vehicle master car key, and 2) the *<insert as appropriate:>*

- purchaser was not a new car dealer, a person actually engaged in the trade of locksmith, a law enforcement agency, a loan institution which finances the purchase of motor vehicles.
- the defendant was not engaged in the manufacture of such keys as a bona fide business or was not a new car dealer licensed under Connecticut law or was not a person actually engaged in the trade of locksmith or was not a law enforcement agent or was not a loan institution that finances the purchase of motor vehicles.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the (sale / possession) of a master car key, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### *Commentary*

#### *Subsequent offenders*

General Statutes § 53-142a provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 53-142a. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## 8.3-7 Reckless Driving -- § 14-222

New, May 10, 2012

The defendant is charged [in count \_\_\_] with reckless driving. The statute defining this offense reads in pertinent part as follows:

No person shall recklessly operate any motor vehicle *<insert as appropriate:>*

- upon any public highway of the state.
- upon any road of a specially chartered municipal association or district, a purpose of which is the construction and maintenance of roads and sidewalks.
- in any parking area for ten cars or more.
- upon any private road on which a speed limit has been established.
- upon any school property.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### **Element 1 - Operated a motor vehicle**

The first element is that the defendant was operating a motor vehicle at the time and place alleged. "Motor vehicle" includes any vehicle used on a public highway.<sup>1</sup>

A person "operates" a motor vehicle within the meaning of the statute when, while in the vehicle, such person intentionally does any act or makes use of any mechanical or electrical agency that alone, or in sequence, will set in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. *<See Intent: General, Instruction 2.3-1.>*

### **Element 2 - On certain roadways**

The second element is that the defendant was operating the motor vehicle *<insert as appropriate:>*

- upon any public highway of the state. This includes any state or other public highway, road, street, avenue, alley, driveway, parkway or place, under the control of the state or any political subdivision of the state, opened to the public for travel or other use.<sup>2</sup>
- upon any road of a specially chartered municipal association or district, a purpose of which is the construction and maintenance of roads and sidewalks.<sup>3</sup>
- in any parking area for ten cars or more. "Parking area" includes lots, areas or other accommodations for the parking of motor vehicles off the street or highway and open to public use with or without charge.<sup>4</sup>
- upon any private road on which a speed limit has been established.<sup>5</sup>
- any school property.

### **Element 3 - Recklessly**

The third element is that the defendant was operating the motor vehicle recklessly. Operating recklessly, within the meaning of the statute, requires a conscious choice of a course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts

that would disclose this danger to a reasonable person. It is more than negligence or gross negligence. It is reckless indifference to the safety of others.<sup>6</sup>

In determining whether the defendant was operating the motor vehicle recklessly, consider the width, traffic and use of such highway, road, school property or parking area, the intersection of streets and the weather conditions.

*<Include if any of the four circumstances in the statute are alleged:>*

If you find that the state has proved beyond a reasonable doubt that the defendant *<insert as appropriate:>*

- operated a motor vehicle at such a rate of speed as to endanger the life of any person other than the operator of such motor vehicle.
- operated on a downgrade portion of any highway any motor vehicle with a commercial registration with the clutch or gears disengaged,
- knowingly operated a motor vehicle with defective mechanism,
- operated a motor vehicle at a rate of speed greater than eighty-five miles per hour,

then you must find this element has been satisfied.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was operating a motor vehicle, 2) it was being operated on *<insert type of road>*, and 3) it was being operated recklessly.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of reckless driving, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 14-212 (5).

<sup>2</sup> General Statutes § 14-212 (1) adopts the definition of "highway" in General Statutes § 14-1 (39). "The plain meaning of the word 'highway' is 'a main road or thoroughfare; hence, a road or way open to the use of the public.'" (Internal quotation marks omitted.) *State v. Harrison*, 30 Conn. App. 108, 118 (1993). Thus, "[t]he expression 'private highway' is a misnomer and 'public highway' is tautology." *Stavola v. Palmer*, 136 Conn. 670, 684 (1950). The dictionary definition of highway is "any road freely open to everyone; public road."

<sup>3</sup> Municipalities may charter municipal associations or special districts for various purposes, one of which is the construction and maintenance of roads and sidewalks. See General Statutes § 7-326.

<sup>4</sup> General Statutes § 14-212 (6).

<sup>5</sup> The speed limit on a private road is established pursuant to General Statutes § 14-218a.

<sup>6</sup> Definition derived from *State v. Edwards*, 22 Conn. Sup. 391, 393-94 (1961), with some additional language from *State v. Miller*, 122 Conn. App. 631, 634 (2010); *State v. Sandra O.*, 51 Conn. App. 463, 467 (1999).

### ***Commentary***

Whether the motor vehicle was being operating on a type of road listed in the statute is a question of fact. *State v. Harrison*, 30 Conn. App. 108, 119 (1993); see also *State v. Taylor*, 306 Conn. 426, 436 (2012) (finding sufficient evidence regarding the character of the street to permit the jury to find that it was a public highway).

### ***Subsequent offenders***

General Statutes § 14-222 (b) provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 14-222. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## 8.3-8 Operation without an Ignition Interlock Device -- § 14-215 (c)

New November 6, 2014

The defendant is charged [in count \_\_\_] with operating a motor vehicle without an ignition interlock device. The statute defining this offense reads in pertinent part as follows:

No person shall operate a motor vehicle in violation of a restriction or limitation placed on such person's license or right to operate a motor vehicle in this state not to operate any motor vehicle unless such motor vehicle is equipped with an ignition interlock device.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### **Element 1 - Operated a motor vehicle**

The first element is that the defendant (operated / caused to be operated) a motor vehicle. A "motor vehicle" means all vehicles used on a public highway and include automobiles. A person "operates" a motor vehicle within the meaning of the statute when, while in the vehicle, such person intentionally does any act or makes use of any mechanical or electrical agency that alone, or in sequence, will set in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. <See *Intent: General, Instruction 2.3-1.*>

### **Element 2 - In violation of an order**

The second element is that such operation occurred during a period when the person's right to operate a motor vehicle was limited or restricted by an order not to operate any motor vehicle unless such motor vehicle is equipped with an ignition interlock device.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant operated a motor vehicle, and 2) at the time the defendant was under an order not to operate a motor vehicle unless it is equipped with an ignition interlock device.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of operating a motor vehicle without an ignition interlock device, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

This offense was added by P.A. No. 11-48, § 56, effective January 1, 2012.

### ***Subsequent offenders***

General Statutes § 14-215 (c) provides for an enhanced sentence if the defendant has previously violated this section. Pursuant to Practice Book § 36-14, the prior conviction must

be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## **8.4 BREACH OF PEACE AND DISORDERLY CONDUCT**

### **8.4 Introduction to Breach of Peace and Disorderly Conduct**

**8.4-1 Breach of the Peace in the First Degree -- §  
53a-180aa**

**8.4-2 Breach of the Peace in the Second Degree --  
§ 53a-181 (a) (1)**

**8.4-3 Breach of the Peace in the Second Degree --  
§ 53a-181 (a) (2)**

**8.4-4 Breach of the Peace in the Second Degree --  
§ 53a-181 (a) (3)**

**8.4-5 Breach of the Peace in the Second Degree --  
§ 53a-181 (a) (4)**

**8.4-6 Breach of the Peace in the Second Degree --  
§ 53a-181 (a) (5)**

**8.4-7 Breach of the Peace in the Second Degree --  
§ 53a-181 (a) (6)**

**8.4-8 Disorderly Conduct -- § 53a-182**

**8.4-9 Obstructing Free Passage -- § 53a-182a**

## 8.4 Introduction to Breach of Peace and Disorderly Conduct

Revised to December 1, 2007

### *Intent*

The offenses of breach of peace and disorderly conduct have the same intent element: "with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof." In *State v. Indrisano*, 228 Conn. 795, 810-11 (1994), the Supreme Court applied the following interpretive gloss to the mens rea language of the disorderly conduct statute: "The predominant intent must be to cause what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm." In *State v. Wolff*, 237 Conn. 633, 670 (1996), the Court applied it to the breach of peace statute. See also *State v. Scott*, 83 Conn. App. 724, 730 (2004) ("the defendant's right to exercise his freedom of speech is not as significant as compared to nearly causing a car to collide with him and frightening the occupant").

This intent to cause inconvenience, annoyance or alarm as defined must predominate over any intent to exercise a constitutional right. "Predominance can be determined either (1) from the fact that no bona fide intent to exercise a constitutional right appears to have existed or (2) from the fact that the interest to be advanced by the particular exercise of a constitutional right is insignificant in comparison with the inconvenience, annoyance or alarm caused by the exercise." (Internal quotation marks omitted.) *State v. Indrisano*, supra, 228 Conn. 807.

### *Conduct*

The conduct elements of breach of peace and disorderly conduct have been challenged on numerous occasions as being too broad and criminalizing some behavior that would be protected speech under the First Amendment. The appellate courts have, in those cases, applied glosses to the statutory language to limit its reach.

#### "Engages in fighting or in violent, tumultuous or threatening behavior"

In *State v. Indrisano*, supra, 228 Conn. 812, the Court interpreted the phrase "violent, tumultuous or threatening behavior" to require physical conduct. See also *State v. LoSacco*, 12 Conn. App. 481, 491, cert. denied, 205 Conn. 814 (1983) (statute limited to conduct that actually involves physical violence or portends imminent physical violence). "*Indrisano* avoided first amendment difficulties that would criminalize mere verbal speech by clarifying that a conviction under § 53a-182 must be based on a defendant's conduct rather than on a defendant's statements." *State v. McKiernan*, 78 Conn. App. 182, 188, cert. denied, 266 Conn. 902 (2003).

"This conclusion is consistent with the 'fighting words' limitation that must be applied when the conduct sought to be proscribed consists purely of speech. . . . The *Chaplinsky* doctrine [*Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942)] permits the state to prohibit speech that has a direct tendency to inflict injury or to cause acts of violence or a breach of the peace by the person to whom it is directed." *State v. Indrisano*, supra, 228 Conn. 812.

This same gloss was applied to the breach of peace statute, § 53a-181 (a) (1), in *State v. Szymkiewicz*, 237 Conn. 613, 620 (1996). Section 53a-181 (a) (1) "does not require proof of

actual physical contact on the part of the defendant with a victim as in fact occurred in *Indrisano*, but rather that, when applied to speech, the parameters of the violent, threatening or tumultuous behavior prohibited by § 53a-181 (a) (1) are consistent with 'fighting words' -- i.e., speech that has a direct tendency to cause imminent acts of violence or an immediate breach of the peace. Such speech must be of such a nature that it is likely to provoke the average person to retaliation." (Internal quotation marks omitted.) *Id.*, 620.

A narrower class of "fighting words" applies when the person to whom the words are addressed is a police officer, because a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen." (Internal quotation marks omitted.) *Id.*, 620 n.12.

See also *State v. Hawley*, 102 Conn. App. 551, 555, cert. denied, 284 Conn. 914 (2007) (spitting in someone's face is "violent or tumultuous behavior with the intent to cause annoyance, alarm or inconvenience"); *State v. Porter*, 76 Conn. App. 477, 488, cert. denied, 264 Conn. 910 (2003) ("violent," for the purposes of the breach of the peace statute, is defined as "characterized by extreme force and furious or vehement to the point of being improper, unjust, or illegal"); *State v. Samuel*, 57 Conn. App. 64, 70, cert. denied, 253 Conn. 990 (2000) (throwing a brick through a car window is violent behavior).

"Threatens to commit any crime against another person or such other person's property."

In *State v. DeLoreto*, 265 Conn. 145 (2003), the Court distinguished "fighting words" from "true threats." "True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. . . . The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur." (Internal quotation marks omitted.) *Id.*, 154.

As applied to police officers, "a narrower class of statements constitutes fighting words when spoken to police officers, rather than to ordinary citizens, because of the communicative value of such statements." *Id.*, 163. This is not true of true threats spoken to police officers. *Id.* "[W]hen a police officer is the only person upon whose sensibilities the inflammatory language could have played, a conviction can be supported only for extremely offensive behavior supporting an inference that the actor wished to provoke the policeman to violence." *Id.*, 169.

See also *State v. Crudup*, 81 Conn. App. 248, 260, cert. denied, 268 Conn. 913 (2004) (trial court properly instructed the jury to apply the objective "reasonable person" standard to the threat to determine whether the defendant's speech rose to the level of an actual threat to commit a crime).

"Abusive or obscene language or makes an obscene gesture."

"'Fighting words' may consist of language that is neither obscene nor abusive. The language of the statute leads us to conclude that the distinction that may be drawn between the 'fighting words' as contemplated under subdivision (1) and those under subdivision (5) can be found 'under the totality of the circumstances,' as expressed in *Szymkiewicz*, which gives rise to the use of the words. Subdivision (1) proscribes fighting words uttered in a violent, tumultuous or threatening manner . . . whereas subdivision (5) proscribes fighting words that tend to induce immediate violence by the person or persons to whom the words are uttered because of their raw effect. The core meaning of subdivision (5) remains intact; fighting words may arise in

different contexts not confined to abusive or obscene language." *State v. Caracoglia*, 78 Conn. App. 98, 109-110, cert. denied, 266 Conn. 903 (2003).

*Disorderly Conduct*

"By offensive or disorderly conduct, annoys or interferes with another person" in § 53a-182 (a) (2) means "by conduct that is grossly offensive, under contemporary community standards, to a person who actually overhears or sees it, disturbs or impedes the lawful activity of that person." *State v. Indrisano*, supra, 228 Conn. 818.

## 8.4-1 Breach of the Peace in the First Degree -- § 53a-180aa

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with breach of the peace in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of breach of the peace in the first degree when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person places (a nonfunctional imitation of an explosive or incendiary device / an imitation of a hazardous substance) in a public place or in a place or manner likely to be discovered by another person.

For you to find the defendant guilty of this charge, the state must first prove beyond a reasonable doubt the following elements:

### Element 1 - Intent/Recklessness

The first element is that the defendant

- acted with the intent to cause inconvenience, annoyance or alarm. The predominant intent must be to cause what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm. <See *Intent: Specific, Instruction 2.3-1.*>
- recklessly created a risk of causing inconvenience, annoyance or alarm. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

The words "inconvenience, annoyance or alarm" refer to what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm.<sup>1</sup>

### Element 2 - Imitation Explosive / Incendiary device / Hazardous substance

The second element is that the defendant placed a (nonfunctional imitation of an explosive or incendiary device / an imitation of a hazardous substance) in a public place or in a place or manner likely to be discovered by another person." <Insert appropriate definition:>

- "Explosive or incendiary device" means (A) dynamite and all other forms of high explosives, (B) any explosive bomb, grenade, missile or similar device, and (C) any incendiary bomb or grenade, fire bomb or similar device, including any device which (i) consists of or includes a breakable container which contains a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and (ii) can be carried or thrown by an individual. You do not need to find that the item was such a device. It need only appear to be one.
- "Hazardous substance" means any physical, chemical, biological or radiological substance or matter which, because of its quantity, concentration or physical, chemical or

infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health.<sup>2</sup> You do not need to find that the substance was hazardous. It need only appear to be so.

### **Element 3 - Public place**

The third element is that the (device / substance) must have been placed in a public place or in a place or manner likely to be discovered by another person. "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.<sup>3</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (intended to cause / recklessly created a risk of causing) public inconvenience, annoyance, or alarm, 2) (he/she) did so by placing an imitation <identify type of device or substance>, and 3) it was placed in a public place or in a place or manner likely to be discovered by another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of breach of peace in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The Supreme Court applied this interpretive gloss to the mens rea language of the disorderly conduct statute in *State v. Indrisano*, 228 Conn. 795, 810-811 (1994). In *State v. Wolff*, 237 Conn. 633, 670 (1996), the Court applied it to the breach of peace statute. See the discussion of intent in the Introduction to this section.

<sup>2</sup> Defined in § 53a-180aa (b).

<sup>3</sup> Id.

## 8.4-2 Breach of the Peace in the Second Degree -- § 53a-181 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with breach of the peace in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person engages in fighting or in violent, tumultuous or threatening behavior in a public place.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant

- acted with the intent to cause inconvenience, annoyance or alarm. The predominant intent must be to cause what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm. <See *Intent: Specific, Instruction 2.3-1.*>
- recklessly created a risk of causing inconvenience, annoyance or alarm. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

The words "inconvenience, annoyance or alarm" refer to what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm.<sup>1</sup>

### Element 2 - Conduct

The second element is that the defendant engaged in fighting or in violent, tumultuous or threatening behavior that actually involved physical violence or portended imminent physical violence.<sup>2</sup> The defendant's conduct must be more than a display of mere bad manners. It must cause or create a risk of causing inconvenience, annoyance or alarm among members of the public.

[<If appropriate:> The defendant's speech, absent actual physical conduct, may constitute the prohibited behavior when it can be identified as "fighting words," which is speech that has a direct tendency to cause imminent acts of violence or portends violence. Such speech must be of such a nature that it is likely to provoke the average person to retaliation.<sup>3</sup>]

### **Element 3 - Public Place**

The third element is that the conduct took place in a public place. "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.<sup>4</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (intended to cause / recklessly created a risk of causing) inconvenience, annoyance, or alarm, 2) *<describe conduct>*, and 3) it was in a public place.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of breach of peace in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The Supreme Court applied this interpretive gloss to the mens rea language of the disorderly conduct statute in *State v. Indrisano*, 228 Conn. 795, 810-811 (1994). In *State v. Wolff*, 237 Conn. 633, 670 (1996), the Court applied it to the breach of peace statute. See the discussion of intent in the Introduction to this section.

<sup>2</sup> *State v. Indrisano*, supra, 228 Conn. 812, interpreted the phrase "violent, tumultuous or threatening behavior" to require physical conduct. See also *State v. LoSacco*, 12 Conn. App. 481, 491, cert. denied, 205 Conn. 814 (1983) (statute limited to conduct that actually involves physical violence or portends imminent physical violence). "*Indrisano* avoided first amendment difficulties that would criminalize mere verbal speech by clarifying that a conviction under § 53a-182 must be based on a defendant's conduct rather than on a defendant's statements." *State v. McKiernan*, 78 Conn. App. 182, 188, cert. denied, 266 Conn. 902 (2003).

<sup>3</sup> See *State v. Szymkiewicz*, 237 Conn. 613, 620-24 (1996); *State v. Gaymon*, 96 Conn. App. 244, 248, cert. denied, 280 Conn. 906 (2006).

<sup>4</sup> Defined in § 53a-180aa (b).

## 8.4-3 Breach of the Peace in the Second Degree -- § 53a-181 (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with breach of the peace in the second degree. The statute defining this offense reads in pertinent as follows:

a person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person assaults or strikes another.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant

- acted with the intent to cause inconvenience, annoyance or alarm. The predominant intent must be to cause what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm. <See *Intent: Specific, Instruction 2.3-1.*>
- recklessly created a risk of causing inconvenience, annoyance or alarm. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

The words "inconvenience, annoyance or alarm" refer to what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm.<sup>1</sup>

### Element 2 - Assaulted or struck another person

The second element is that the defendant assaulted or struck another person. An "assault" is a demonstration of an unlawful intent to inflict immediate injury on the person of another who is then present. The statute also prohibits the striking of another. "Striking" means to deliver a blow. A defendant may be liable for striking another when the blow is delivered through some intervening agency that (he/she) has put in motion as, for example, intentionally throwing an object that strikes another person.<sup>2</sup>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (intended to cause / recklessly created a risk of causing) inconvenience, annoyance, or alarm, and 2) <describe conduct>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of breach of peace in the second degree, then you shall find the defendant guilty.

On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The Supreme Court applied this interpretive gloss to the mens rea language of the disorderly conduct statute in *State v. Indrisano*, 228 Conn. 795, 810-811 (1994). In *State v. Wolff*, 237 Conn. 633, 670 (1996), the Court applied it to the breach of peace statute. See the discussion of intent in the Introduction to this section.

<sup>2</sup> Carefully tailor this part of the instruction to the allegations and evidence. A striking does not always constitute an assault.

## 8.4-4 Breach of the Peace in the Second Degree -- § 53a-181 (a) (3)

Revised to June 12, 2009

The defendant is charged [in count \_\_\_] with breach of the peace in the second degree. The statute defining this offense reads in pertinent as follows:

a person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person threatens to commit any crime against another person or such other person's property.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant

- acted with the intent to cause inconvenience, annoyance or alarm. The predominant intent must be to cause what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm. <See Intent: Specific, Instruction 2.3-1.>
- recklessly created a risk of causing inconvenience, annoyance or alarm. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See Recklessness, Instruction 2.3-4.>

The words "inconvenience, annoyance or alarm" refer to what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm.<sup>1</sup>

### Element 2 - Threat

The second element is that the defendant threatened to commit a crime against another person or (his/her) property. The state claims that the defendant threatened to commit the crime of <identify crime> against <identify other person or the property>. This crime is defined by statute as <read applicable statute>.

A threat can only be punishable when it is a true threat, that is, a threat that a reasonable person would understand as a serious expression of an intent to harm or assault, and not as mere puffery, bluster, jest or hyperbole. In determining whether the threat is a true threat, consider the particular factual context in which the allegedly threatening conduct occurred which could include the reaction of the person allegedly being threatened and the defendant's conduct before and after the allegedly threatening conduct.<sup>2</sup>

## Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (intended to cause / recklessly created a risk of causing) inconvenience, annoyance, or alarm, and 2) *<describe conduct>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of breach of peace in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The Supreme Court applied this interpretive gloss to the mens rea language of the disorderly conduct statute in *State v. Indrisano*, 228 Conn. 795, 810-811 (1994). In *State v. Wolff*, 237 Conn. 633, 670 (1996), the Court applied it to the breach of peace statute. See the discussion of intent in the Introduction to this section.

<sup>2</sup> See *State v. DeLoreto*, 265 Conn. 145, 154 (2003); *State v. Crudup*, 81 Conn. App. 248, 260, cert. denied, 268 Conn. 913 (2004). In *State v. DeLoreto*, supra, 265 Conn. 168, the Court stated that this subsection does not criminalize only true threats, but "potentially could encompass that class of statements that, while they would qualify as fighting words for the ordinary citizen, are not offensive enough to provoke a police officer to violence and are, thus, protected speech." The Court then adopts a judicial gloss that "when a police officer is the only person upon whose sensibilities the inflammatory language could have played, a conviction can be supported only for extremely offensive behavior supporting an inference that the actor wished to provoke the policeman to violence." (Internal quotation marks omitted.) *Id.*, 169.

## 8.4-5 Breach of the Peace in the Second Degree -- § 53a-181 (a) (4)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with breach of the peace in the second degree. The statute defining this offense reads in pertinent as follows:

a person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person publicly exhibits, distributes, posts up or advertises any offensive, indecent or abusive matter concerning any person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant

- acted with the intent to cause inconvenience, annoyance or alarm. The predominant intent must be to cause what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm. <See Intent: Specific, Instruction 2.3-1.>
- recklessly created a risk of causing inconvenience, annoyance or alarm. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See Recklessness, Instruction 2.3-4.>

The words "inconvenience, annoyance or alarm" refer to what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm.<sup>1</sup>

### Element 2 - Posted indecent or abusive matter

The second element is that the defendant publicly exhibited, distributed, posted up or advertised any offensive, indecent or abusive matter concerning any person. The words "offensive, indecent or abusive" are to be tested by what ordinary people would understand, under contemporary community standards, as being so grossly offensive, indecent or abusive to the person to whom the matter is directed as to amount to a serious annoyance.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (intended to cause / recklessly created a risk of causing) inconvenience, annoyance, or alarm, and 2) <describe conduct>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of breach of peace in the second degree, then you shall find the defendant guilty.

On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The Supreme Court applied this interpretive gloss to the mens rea language of the disorderly conduct statute in *State v. Indrisano*, 228 Conn. 795, 810-811 (1994). In *State v. Wolff*, 237 Conn. 633, 670 (1996), the Court applied it to the breach of peace statute. See the discussion of intent in the Introduction to this section.

## 8.4-6 Breach of the Peace in the Second Degree -- § 53a-181 (a) (5)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with breach of the peace in the second degree. The statute defining this offense reads in pertinent as follows:

a person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person in a public place, uses abusive or obscene language or makes an obscene gesture.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant

- acted with the intent to cause inconvenience, annoyance or alarm. The predominant intent must be to cause what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm. <See *Intent: Specific, Instruction 2.3-1.*>
- recklessly created a risk of causing inconvenience, annoyance or alarm. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

The words "inconvenience, annoyance or alarm" refer to what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm.<sup>1</sup>

### Element 2 - Abusive or obscene language or gesture

The second element is that the defendant used abusive or obscene language or made an obscene gesture. The alleged language used or the obscene gesture made must be overheard or seen by others.

Language is "abusive" if it is so coarse and insulting as to create a substantial risk of provoking violence. The state must prove that the defendant's language had a substantial tendency to provoke violent retaliation or other wrongful conduct. The words used must be "fighting words," which is speech that has a direct tendency to cause imminent acts of violence or portends violence. Such speech must be of such a nature that it is likely to provoke the average person to retaliation.<sup>2</sup>

To be obscene, language or gestures must, under contemporary community standards, be so grossly offensive to members of the public who actually overhear the language or who see the

gesture, as to amount to a serious annoyance. It must be in a significant way erotic and must appeal to prurient interest in sex or portray sex in a patently offensive way.<sup>3</sup>

### **Element 3 - Public Place**

The third element is that the conduct took place in a public place. "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.<sup>4</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (intended to cause / recklessly created a risk of causing) inconvenience, annoyance, or alarm, 2) *<describe conduct>*, and 3) it was in a public place.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of breach of peace in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The Supreme Court applied this interpretive gloss to the mens rea language of the disorderly conduct statute in *State v. Indrisano*, 228 Conn. 795, 810-811 (1994). In *State v. Wolff*, 237 Conn. 633, 670 (1996), the Court applied it to the breach of peace statute. See the discussion of intent in the Introduction to this section.

<sup>2</sup> See *State v. Szymkiewicz*, 237 Conn. 613, 620-24 (1996); *State v. Gaymon*, 96 Conn. App. 244, 248, cert. denied, 280 Conn. 906 (2006).

<sup>3</sup> See *State v. Anonymous*, 34 Conn. Sup. 575, 577 (App. Sess. 1977).

<sup>4</sup> Defined in § 53a-180aa (b).

## 8.4-7 Breach of the Peace in the Second Degree -- § 53a-181 (a) (6)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with breach of the peace in the second degree. The statute defining this offense reads in pertinent as follows:

a person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person creates a public and hazardous or physically offensive condition by any act which he is not licensed or privileged to do.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant *<insert as appropriate:>*

- acted with the intent to cause inconvenience, annoyance or alarm. The predominant intent must be to cause what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm. *<See Intent: Specific, Instruction 2.3-1.>*
- recklessly created a risk of causing inconvenience, annoyance or alarm. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<See Recklessness, Instruction 2.3-4.>*

The words "inconvenience, annoyance or alarm" refer to what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm.<sup>1</sup>

### Element 2 - Created public hazardous or offensive condition

The second element is that the defendant created a public and (hazardous / physically offensive) condition by any act that (he/she) was not licensed or privileged to do. "Hazardous" means risky, dangerous, or perilous. "Physically offensive" means that the matter, material or substance is revolting, disgusting or repugnant. The test is whether under contemporary community standards the defendant created a condition that was hazardous to other persons or was so physically offensive to members of the public as to amount to a serious annoyance. The state must further prove that the defendant was not licensed or privileged to create the alleged condition.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (intended to cause / recklessly created a risk of causing) inconvenience, annoyance, or alarm, and 2) *<describe conduct>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of breach of peace in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The Supreme Court applied this interpretive gloss to the mens rea language of the disorderly conduct statute in *State v. Indrisano*, 228 Conn. 795, 810-811 (1994). In *State v. Wolff*, 237 Conn. 633, 670 (1996), the Court applied it to the breach of peace statute. See the discussion of intent in the Introduction to this section.

## 8.4-8 Disorderly Conduct -- § 53a-182

Revised to December 1, 2007

**Note:** This instruction encompasses all 7 subsections of the statute, which describe different types of conduct that could rise to the level of being "disorderly" and punishable under this statute. Because of the possibility that conduct falling within any of these subsections could be constitutionally protected, the instruction must carefully delineate the allegations and the evidence that make up the punishable offense.

The defendant is charged [in count \_\_\_] with disorderly conduct. The statute defining this offense reads in pertinent part as follows:

a person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person: *<insert appropriate subsection:>*

- § 53a-182 (a) (1): engages in fighting or in violent, tumultuous or threatening behavior.
- § 53a-182 (a) (2): by offensive or disorderly conduct, annoys or interferes with another person.
- § 53a-182 (a) (3): makes unreasonable noise.
- § 53a-182 (a) (4): without lawful authority, disturbs any lawful assembly or meeting of persons.
- § 53a-182 (a) (5): obstructs vehicular or pedestrian traffic.
- § 53a-182 (a) (6): congregates with other persons in a public place and refuses to comply with a reasonable official request or order to disperse.
- § 53a-182 (a) (7): commits simple trespass and observes, in other than a casual or cursory manner, another person (A) without the knowledge of consent of such other person, (B) while such other person is inside a dwelling and not in plain view, and (C) under circumstances where such other person has a reasonable expectation of privacy.

For you to find the defendant guilty of this charge, the state must first prove beyond a reasonable doubt the following elements:

### Element 1 - Intent

The first element is that the defendant

- acted with the intent to cause inconvenience, annoyance or alarm. The predominant intent must be to cause what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm. *<See Intent: Specific, Instruction 2.3-1.>*
- recklessly created a risk of causing inconvenience, annoyance or alarm. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<See Recklessness, Instruction 2.3-4.>*

The words "inconvenience, annoyance or alarm" refer to what a reasonable person operating under contemporary community standards would consider a disturbance to or impediment of a

lawful activity, a deep feeling of vexation or provocation, or a feeling of anxiety prompted by threatened danger or harm.<sup>1</sup>

## **Element 2 - Conduct**

The second element is that *<insert as appropriate:>*

- § 53a-182 (a) (1): the defendant engaged in fighting or in violent, tumultuous or threatening behavior of a physical nature.<sup>2</sup>
- § 53a-182 (a) (2): by offensive or disorderly conduct, the defendant annoyed or interfered with another person. "Offensive or disorderly conduct" refers to conduct that is grossly offensive, under contemporary community standards, to a person who actually overhears it or sees it. "Annoys or interferes" refers to conduct that disturbs or impedes the lawful activity of another person.<sup>3</sup>
- § 53a-182 (a) (3): the defendant made unreasonable noise. The noise made must be unreasonable given the time, place and circumstances.
- § 53a-182 (a) (4): the defendant, without lawful authority, disturbed any lawful assembly or meeting of persons. The defendant must have disturbed or disrupted a lawful meeting of persons by shouts or other conduct. The defendant's conduct must be more than bad manners. The state must prove beyond a reasonable doubt that the defendant had no lawful authority to engage in the alleged conduct and further that such conduct occurred at a lawful assembly or meeting of persons.
- § 53a-182 (a) (5): the defendant obstructed vehicular or pedestrian traffic. "Obstruct" means to get in the way of; to cut off; to block. [*<Insert if applicable:>* Persons who carry placards or distribute pamphlets or disseminate information along a public street may not be prosecuted under this section unless it is their intention to cause inconvenience, annoyance or alarm, or to recklessly create a risk thereof by obstructing vehicular or pedestrian traffic.]
- § 53a-182 (a) (6): the defendant congregated with other persons in a public place and refused to comply with a reasonable official request or order to disperse. The alleged conduct must have occurred in a public place, that is, a place used by or held out for use by the public.
- § 53a-182 (a) (7): the defendant committed simple trespass, and observed, in other than a casual or cursory manner, another person without the knowledge or consent of that other person, while that other person had a reasonable expectation of privacy. A person is guilty of simple trespass when, knowing one is not licensed or privileged to do so, (he/she) enters any premises without intent to harm any property. A person has a reasonable expectation of privacy when (he/she) has shown a subjective expectation of privacy with respect to the dwelling and the expectation is one that society considers reasonable.

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (intended to cause / recklessly created a risk of causing) inconvenience, annoyance, or alarm, and 2) *<describe conduct>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of disorderly conduct, then you shall find the defendant guilty. On the other hand,

if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The Supreme Court applied this interpretive gloss to the mens rea language of the disorderly conduct statute in *State v. Indrisano*, 228 Conn. 795, 810-811 (1994). See the discussion of intent in the Introduction to this section.

<sup>2</sup> *State v. Indrisano*, supra, 228 Conn. 812, interpreted the phrase "violent, tumultuous or threatening behavior" to require physical conduct. See also *State v. LoSacco*, 12 Conn. App. 481, 491, cert. denied, 205 Conn. 814 (1983) (statute limited to conduct that actually involves physical violence or portends imminent physical violence). "*Indrisano* avoided first amendment difficulties that would criminalize mere verbal speech by clarifying that a conviction under § 53a-182 must be based on a defendant's conduct rather than on a defendant's statements." *State v. McKiernan*, 78 Conn. App. 182, 188, cert. denied, 266 Conn. 902 (2003).

<sup>3</sup> See *State v. Indrisano*, supra, 228 Conn. 819; *State v. Musumano*, 76 Conn. App. 724 (2003) (court reversed for not including *Indrisano* gloss that "offensive and disorderly conduct" is that which is "grossly offensive, under contemporary community standards, to a person who actually overhears it or sees it").

### *Commentary*

#### *Lesser included offenses*

Disorderly conduct is not a lesser included offense of assault in the second degree. *State v. Stavrakis*, 88 Conn. App. 371, 389, cert. denied, 273 Conn. 939 (2005).

Disorderly conduct can be a lesser included offense of breach of peace in the second degree, General Statutes § 53a-181 (a) (1). The only difference is that breach of peace requires that the violent, tumultuous or threatening behavior be in a public place. *State v. Simmons*, 86 Conn. App. 381, 391-92 (2004), cert. denied, 273 Conn. 923, cert. denied, 546 U.S. 822, 126 S.Ct. 356, 163 L.Ed.2d 64 (2005).

## 8.4-9 Obstructing Free Passage -- § 53a-182a

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with obstructing free passage. The statute defining this offense reads in pertinent part as follows:

a person is guilty of obstructing free passage when, after being warned by a law enforcement officer not to do so, (he/she) <insert appropriate subsection:>

- § 53a-182a (a) (1): stands, sits or lies in or upon any public street, curb, crosswalk, walkway area, mall or the portion of private property utilized for public use, so as to obstruct unreasonably the free passage of pedestrians thereon.
- § 53a-182a (a) (2): obstructs unreasonably or prevents free access to the entrance to any building open to the public.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Obstructed free passage

The first element is that the defendant <insert as appropriate:>

- stood, sat or lay in or upon any public street, curb, crosswalk, walkway area, mall or the portion of private property utilized for public use in such a way as to obstruct unreasonably the free passage of pedestrians on <identify area>.
- unreasonably obstructed or prevented free access to the entrance to <identify building>, and <identify building> is open to the public.

"Obstruct" means to get in the way of; cut off; block.

### Element 2 - Warning

The second element is that the defendant had been warned by a law enforcement officer not to do so. A law enforcement officer is a policeman, sheriff, deputy sheriff, constable or other officer whose duty is to enforce the laws and preserve the peace.<sup>1</sup>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) unreasonably obstructed <insert specific allegations>, and 2) the defendant had been warned by a law enforcement officer not to do so.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of obstructing free passage, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Black's Law Dictionary (8th Ed. 2004).

*Commentary*

The statute begins with the following phrase: "Unless a person is engaging in any activity which is expressive of rights guaranteed under the constitution of the United States or the constitution of this state . . . ." This would likely be raised, and decided by the court, on a motion to dismiss. It may also be raised as a defense, in which case, in the absence of appellate case law on the issue, it would presumably be a general defense that must be disproved by the state beyond a reasonable doubt.

## **8.5 FALSELY REPORTING AN INCIDENT**

**8.5-1 Falsely Reporting an Incident in the First Degree -- § 53a-180 (a) (1)**

**8.5-2 Falsely Reporting an Incident in the First Degree -- § 53a-180 (a) (2)**

**8.5-3 Falsely Reporting an Incident Resulting in Serious Physical Injury or Death -- § 53a-180a**

**8.5-4 Falsely Reporting an Incident Concerning Serious Physical Injury or Death -- § 53a-180b**

**8.5-5 Falsely Reporting an Incident in the Second Degree -- § 53a-180c**

## 8.5-1 Falsely Reporting an Incident in the First Degree -- § 53a-180 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with falsely reporting an incident in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of falsely reporting an incident in the first degree when, knowing the information reported, conveyed or circulated to be false or baseless, such person initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, catastrophe or emergency under circumstances in which it is likely that public alarm or inconvenience will result.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Reported a fire, explosion, catastrophe or emergency**

The first element is that the defendant initiated or circulated a report or warning about an alleged occurrence or impending occurrence of a fire, explosion, catastrophe or emergency. *<Insert specific allegations.>*

### **Element 2 - False or baseless**

The second element is that the information reported or contained in such report or warning was false or baseless. "False" means not true. "Baseless" means groundless, without any foundation in fact.

### **Element 3 - Knowledge**

The third element is that the defendant knew that such information was false or baseless. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. *<See Knowledge, Instruction 2.3-3.>*

### **Element 4 - Public harm or inconvenience**

The fourth element is that the defendant initiated or circulated such false report or warning under circumstances in which it was likely that public alarm or inconvenience would result.

"Public" refers to a whole body of people or an entire community, or the inhabitants of a particular place, or a neighborhood, or the people at large. "Inconvenience" means serious hardship or injustice to individuals.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant initiated or circulated a report or warning about an alleged occurrence or impending occurrence of a fire, explosion, catastrophe or emergency, 2) the report or warning was false or baseless, 3) the defendant knew that the report was false or baseless, and 4) (he/she) acted under circumstances in which it was likely that public alarm or inconvenience would result.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of falsely reporting an incident in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 8.5-2 Falsely Reporting an Incident in the First Degree -- § 53a-180 (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with falsely reporting an incident in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of falsely reporting an incident in the first degree when, knowing the information reported, conveyed or circulated to be false or baseless, such person reports, by word or action, to any (official or quasi-official agency / organization having the function of dealing with emergencies involving danger to life or property), an alleged occurrence or impending occurrence of a fire, explosion or other catastrophe or emergency which did not in fact occur or does not in fact exist.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Reported a fire, explosion, catastrophe or emergency**

The first element is that the defendant, by word or action, reported an alleged occurrence or impending occurrence of a fire, explosion or other catastrophe or emergency. Impending means about to happen. <Insert specific allegations.>

### **Element 2 - To official agency**

The second element is that the defendant made such report to an (official or quasi-official agency / organization having the function of dealing with emergencies involving danger to life or property). "Official" means having public authority. "Quasi-official" means having the appearance of public authority.

### **Element 3 - Report was false**

The third element is that such occurrence or impending occurrence did not in fact exist or did not in fact occur.

### **Element 4 - Knowledge**

The fourth element is that the defendant knew that the report was false or baseless. "False" means not true. "Baseless" means groundless, without any foundation in fact. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) reported an alleged occurrence or impending occurrence of a fire, explosion or other catastrophe or emergency, 2) the report was made to an (official or quasi-official agency / organization having the function of dealing with emergencies involving danger to life or property), 3) the occurrence or impending occurrence did not in fact exist or did not in fact occur, and 4) the defendant knew that the report was false or baseless.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of falsely reporting an incident in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 8.5-3 Falsely Reporting an Incident Resulting in Serious Physical Injury or Death -- § 53a-180a

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with falsely reporting an incident resulting in serious physical injury or death. The statute defining this offense reads in pertinent part as follows:  
a person is guilty of falsely reporting an incident resulting in serious physical injury or death when such person commits the crime of (falsely reporting an incident in the first degree / falsely reporting an incident in the second degree) and such false report results in the serious physical injury or death of another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed falsely reporting an incident in the first or second degree**

The first element is that the defendant committed the crime of falsely reporting an incident in the (first / second) degree. <See instruction for underlying crime.>

- § 53a-180 (a) (1): Falsely Reporting an Incident in the First Degree, Instruction 8.5-1.
- § 53a-180 (a) (2): Falsely Reporting an Incident in the First Degree, Instruction 8.5-2.
- § 53a-180c: Falsely Reporting an Incident in the Second Degree, Instruction 8.5-5.

### **Element 2 - Resulted in serious physical injury or death**

The second element is that the false report resulted in the serious physical injury or death of another person.

"Physical injury" means impairment of physical condition or pain. "Serious physical injury" is something more serious than mere physical injury. It is more than a minor or superficial injury. It is defined by statute as "physical injury that creates a substantial risk of death, or that causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

"Resulted in" simply means that such serious physical injury or death was in fact caused by the defendant's false report or that the false report set in motion the chain of events leading to such forbidden result. <See Proximate Cause, Instruction 2.6-1.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that <insert the concluding summary from the instruction for the underlying crime> and that the result of the false report was the (serious physical injury / death) of another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of falsely reporting an incident resulting in serious physical injury or death, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 8.5-4 Falsely Reporting an Incident Concerning Serious Physical Injury or Death -- § 53a-180b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with falsely reporting an incident concerning serious physical injury or death. The statute defining this offense reads in pertinent part as follows:  
a person is guilty of falsely reporting an incident concerning serious physical injury or death when such person commits the crime of falsely reporting an incident in the second degree and such false report is of the alleged occurrence or impending occurrence of the serious physical injury or death of another person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed falsely reporting an incident in the second degree**

The first element is that the defendant committed the crime of falsely reporting an incident in the second degree. <Insert the elements from Falsely Reporting an Incident in the Second Degree, Instruction 8.5-5.>

### **Element 2 - Concerning serious physical injury or death**

The second element is that the false report was of the alleged occurrence or impending occurrence of the serious physical injury to or death of another person. "Impending" means about to happen.

"Physical injury" means impairment of physical condition or pain. "Serious physical injury" is something more serious than mere physical injury. It is more than a minor or superficial injury. It is defined by statute as "physical injury that creates a substantial risk of death, or that causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that <insert the concluding summary from the instruction for falsely reporting an incident in the second degree>, and that the false report concerned the (serious physical injury / death) of another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of falsely reporting an incident concerning serious physical injury or death, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 8.5-5 Falsely Reporting an Incident in the Second Degree -- § 53a-180c

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with falsely reporting an incident in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of falsely reporting an incident in the second degree when, knowing the information reported, conveyed or circulated to be false or baseless, such person gratuitously reports to a law enforcement officer or agency *<insert appropriate subsection:>*

- **§ 53a-180c (a) (1):** the alleged occurrence of an offense or incident which did not in fact occur.
- **§ 53a-180c (a) (2):** an allegedly impending occurrence of an offense or incident which in fact is not about to occur.
- **§ 53a-180c (a) (3):** false information relating to an actual offense or incident or to the alleged implication of some person therein.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Report to officer or agency**

The first element is that the defendant gratuitously reported, conveyed or circulated information to a law enforcement officer or agency. "Gratuitously" means freely and unnecessarily volunteered. A "law enforcement agency or officer" means any federal, state or local organized police department or any member thereof.

### **Element 2 - Substance of report**

The second element is that the report concerned *<insert as appropriate:>*

- **§ 53a-180c (a) (1):** the alleged occurrence of an offense or incident which did not in fact occur.
- **§ 53a-180c (a) (2):** an allegedly impending occurrence of an offense or incident which in fact is not about to occur.
- **§ 53a-180c (a) (3):** false information relating to an actual offense or incident or to the alleged implication of any person therein.

An "offense" means a crime. An "incident" means any event, something which has or may happen; it is not necessarily a crime. *<Insert specific allegations.>*

### **Element 3 - Knowledge**

The third element is that the defendant knew such information was false or baseless. "False" means not true. "Baseless" means groundless, without any foundation in fact. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. *<See Knowledge, Instruction 2.3-3.>*

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant gratuitously reported, conveyed or circulated information to a law enforcement officer or agency, 2) the report contained false information, and 3) the defendant knew such information was false or baseless.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of falsely reporting an incident in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **8.6 RIOT**

- 8.6-1 Riot in the First Degree -- § 53a-175**
- 8.6-2 Riot in the Second Degree -- § 53a-176**
- 8.6-3 Unlawful Assembly -- § 53a-177**
- 8.6-4 Inciting to Riot -- § 53a-178**
- 8.6-5 Criminal Advocacy -- § 53a-179**
- 8.6-6 Inciting Injury to Persons or Property -- § 53a-179a**

## 8.6-1 Riot in the First Degree -- § 53a-175

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with riot in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of riot in the first degree when simultaneously with six or more other persons (he/she) engages in tumultuous and violent conduct and thereby (intentionally / recklessly) (causes / creates a grave risk of causing) public alarm, and in the course of and as a result of such conduct, (a person other than one of the participants suffers physical injury / substantial property damage occurs).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Tumultuous and violent conduct**

The first element is that the defendant engaged in tumultuous and violent conduct<sup>1</sup> that involved physical violence or portended imminent physical violence. "Imminent" means impending or likely to occur immediately.

### **Element 2 - Six or more other persons**

The second element is that (he/she) did so simultaneously with six or more other persons.

### **Element 3 - Intent**

The third element is that the defendant

- acted with the intent to (cause / create a grave risk of causing) public alarm. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>
- recklessly (caused / created a grave risk of causing) public alarm. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

"Alarm" means a fear caused by the sudden realization of danger. "Public alarm" is when such a fear is created in a public area and affects a large number of people in that area.

### **Element 4 - Injury / property damage**

The fourth element is that in the course of and as a result of such conduct, (a person other than one of the participants suffered physical injury / substantial property damage occurred). <Insert appropriate definition:>

- "Physical injury" means impairment of physical condition or pain.
- "Substantial" means that the property damage caused must be something more than trivial or inconsequential as we consider such estimates in our ordinary experiences in life.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) that the defendant engaged in tumultuous and violent conduct, 2) (he/she) did so simultaneously with six or more other

persons, 3) (he/she) (intentionally / recklessly) (caused / created a grave risk of causing) public alarm, and 4) (a person other than one of the participants suffered physical injury / substantial property damage occurred).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of riot in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> In *State v. Indrisano*, 228 Conn. 795, 811-12 (1994), a case that involved the disorderly conduct statute, § 53a-182 (a), the court construed the phrase "[e]ngages in fighting or in violent, tumultuous or threatening behavior" to refer to physical action. See Disorderly Conduct, Instruction 8.4-8.

## 8.6-2 Riot in the Second Degree -- § 53a-176

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with riot in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of riot in the second degree when, simultaneously with two or more other persons, he engages in tumultuous and violent conduct and thereby (intentionally / recklessly) (causes / creates a grave risk of causing) public alarm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Tumultuous and violent conduct**

The first element is that the defendant engaged in tumultuous and violent conduct that involved physical violence or portended imminent physical violence.<sup>1</sup> "Imminent" means impending or likely to occur immediately.

### **Element 2 - Two or more other persons**

The second element is that (he/she) did so simultaneously with two or more other persons.

### **Element 3 - Intent**

The third element is that the defendant

- acted with the intent to (cause / create a grave risk of causing) public alarm. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>
- recklessly (caused / created a grave risk of causing) public alarm. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

"Alarm" means a fear caused by the sudden realization of danger. "Public alarm" is when such a fear is created in a public area and affects a large number of people in that area.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant engaged in tumultuous and violent conduct, 2) (he/she) did so simultaneously with two or more other persons, and 3) (he/she) (intentionally / recklessly) (caused / created a grave risk of causing) public alarm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of riot in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> In *State v. Indrisano*, 228 Conn. 795, 811-12 (1994), a case that involved the disorderly conduct statute, § 53a-182 (a), the court construed the phrase "[e]ngages in fighting or in violent, tumultuous or threatening behavior" to refer to physical action. See Disorderly Conduct, Instruction 8.4-8.

## 8.6-3 Unlawful Assembly -- § 53a-177

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with unlawful assembly. The statute defining this offense reads in pertinent part as follows:

a person is guilty of unlawful assembly when *<insert as appropriate:>*

- (he/she) assembles with two or more other persons for the purpose of engaging in conduct constituting the crime of riot.
- being present at an assembly which either has or develops the purpose of engaging in conduct constituting the crime of riot, (he/she) remains there with intent to advance that purpose.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Assembly

The first element is that the defendant (assembled with two or more other persons / was present at an assembly of two or more other persons).

### Element 2 - Purpose

The second element is that *<insert as appropriate:>*

- the assembly was for the purpose of engaging in conduct constituting the crime of riot.
- the assembly had or developed the purpose of engaging in conduct constituting the crime of riot.

*<See Riot in the Second Degree, Instruction 8.6-2.>*

### Element 3 - Intent

The third element is that the defendant was at or remained at the assembly with the specific intent to engage in conduct that would constitute the crime of riot. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) that the defendant (assembled with two or more other persons / was present at an assembly of two or more other persons), 2) the assembly (was for the purpose of / developed the purpose of) engaging in conduct constituting the crime of riot, and 3) the defendant specifically intended to advance that purpose.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of unlawful assembly, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 8.6-4 Inciting to Riot -- § 53a-178

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with inciting to riot. The statute defining this offense reads in pertinent part as follows:

a person is guilty of inciting to riot when (he/she) advocates, urges or organizes six or more persons to engage in tumultuous and violent conduct of a kind likely to cause public alarm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Incitement**

The first element is that the defendant advocated, urged or organized six or more persons.

### **Element 2 - Tumultuous and violent conduct**

The second element is that the defendant advocated, urged or organized the other persons to engage in tumultuous and violent conduct of a kind likely to cause public alarm. "Tumultuous and violent conduct" means conduct that actually involves physical violence or portends imminent physical violence.<sup>1</sup> "Alarm" means a fear caused by the sudden realization of danger. "Public alarm" is when such a fear is created in a public area and affects a large number of people in that area.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant advocated, urged or organized six or more persons, and 2) (he/she) advocated, urged or organized the other persons to engage in tumultuous and violent conduct of a kind likely to cause public alarm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of inciting to riot, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> In *State v. Indrisano*, 228 Conn. 795, 811-12 (1994), a case that involved the disorderly conduct statute, § 53a-182 (a), the court construed the phrase "[e]ngages in fighting or in violent, tumultuous or threatening behavior" to refer to physical action. See *Disorderly Conduct*, Instruction 8.4-8.

## 8.6-5 Criminal Advocacy -- § 53a-179

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal advocacy. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal advocacy when *<insert appropriate subsection:>*

- § 53a-179 (a) (1): (he/she) advocates the overthrow of the existing form of government of this state or any subdivision thereof by imminent dangerous action.
- § 53a-179 (a) (2): with knowledge of its contents, (he/she) (publishes / sells / distributes) any document which advocates the overthrow of the existing form of government of this state or any subdivision thereof by imminent dangerous action.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Advocated overthrow of government**

The first element is that the defendant advocated the overthrow of the existing form of government of this state or any subdivision of the state.

[*<Insert if defendant is charged under § 53a-179 (a) (2):>* The defendant must have done so by (publishing / selling / distributing) one or more documents and (he/she) must have had knowledge of the contents. *<See Knowledge, Instruction 2.3-3.>*]

### **Element 2 - Imminent dangerous action**

The second element is that (his/her) conduct included an incitement to imminent dangerous action. "Imminent" means impending or likely to occur immediately. An "imminent dangerous action" is that type of act or action that is full of danger or is threatening, menacing or perilous.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant advocated the overthrow of the existing form of government of this state or any subdivision of the state [by (publishing / selling / distributing) one or more documents], and 2) (his/her) advocacy included an incitement to imminent dangerous action.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of criminal advocacy, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 8.6-6 Inciting Injury to Persons or Property -- § 53a-179a

Revised to December 1, 2007 (modified June 13, 2008)

**Note:** Because of the dubious constitutionality of the inclusion of the words "justifies" and "praises" in this statute and the judicial gloss given it in *State v. Ryan*, 48 Conn. App. 148, cert. denied, 244 Conn. 930 (1998); see footnote 1; this instruction does not include those verbs.

The defendant is charged [in count \_\_\_] with inciting injury to (persons / property). The statute defining this offense reads in pertinent part as follows:

a person is guilty of inciting injury to (persons / property) when, in public or private, orally, in writing, in printing or in any other manner, (he/she) (advocates / encourages / incites / solicits)<sup>1</sup> <insert as appropriate:>

- the unlawful burning, injury to or destruction of any public or private property.
- any assault upon (any organization of the armed forces of the United States or of this state / the police force of this or any other state or any officer or member thereof / the organized police or fire departments of any municipality or any officer or member thereof).
- the killing or injuring of any class or body of persons, or of any individual.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Incitement

The first element is that the defendant (advocated / encouraged / incited / solicited) <insert as appropriate:>

- the unlawful burning, injury to or destruction of any public or private property.
- any assault upon (any organization of the armed forces of the United States or of this state / the police force of this or any other state or any officer or member thereof / the organized police or fire departments of any municipality or any officer or member thereof).
- the killing or injuring of any class or body of persons, or of any individual.

[<Insert if applicable:> As used in this statute the word "injury" means impairment of physical condition or pain. There is no requirement that the impairment of physical condition or pain continue for any specific length of time. It may be brief or lengthy.]

The words "(advocate / encourage / incite / solicit)" have their ordinary meaning. They pertain to expressions and conduct that are likely to produce imminent action. The word "imminent" means impending or about to occur. It does not have a specific time frame. The action need not immediately follow the expression or conduct if it is otherwise imminent.<sup>2</sup>

This action can take any form: it can be made in public or private, orally, in writing, in printing or in any other manner.

## **Element 2 - Intent**

The second element is that the defendant specifically intended<sup>3</sup> to cause injury to (a person / property). A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1*.> It is not necessary that the (person / property) was, in fact, injured.

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) <insert specific allegations under the first element>, and 2) (he/she) specifically intended to cause injury to <describe nature of alleged injury>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of inciting injury to persons or property, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See *State v. Ryan*, 48 Conn. App. 148, cert. denied, 244 Conn. 930, cert. denied, 525 U.S. 876, 119 S.Ct. 179, 142 L.Ed.2d 146 (1998), for an explication of this list of verbs. "[W]here the legislature, out of a desire to assure that no artful semanticist will escape the burden of the statute, employs, indiscriminately, seriatim, a number of similar words, some virtually identical, others differing slightly, the better practice would appear to be to let each help to define the other. Accordingly, we read 'justifies' and 'praises' in the sense of 'encourages,' 'advocates,' and 'incites.'" (Internal quotation marks omitted.) *Id.*, 155-56.

<sup>2</sup> See *State v. Damato*, 105 Conn. App. 335, 345-51, cert. denied, 286 Conn. 920 (2008) (discussing the imminence requirement).

<sup>3</sup> "[J]udicial gloss makes it clear that the statute requires an intent to cause injury in addition to the proscribed language." *State v. Ryan*, supra, 48 Conn. App. 152.

## ***Commentary***

General Statutes § 53a-179a is not unconstitutionally void for vagueness and overbreadth. *State v. Ryan*, 48 Conn. App. 148, cert. denied, 244 Conn. 930 (1998); *State v. Leary*, 41 Conn. Sup. 525 (1989).

See *State v. O'Neil*, 65 Conn. App. 145 (2001), aff'd, 262 Conn. 295 (2003), for a discussion of the difference between solicitation and attempt.

## **8.7 TERRORISM**

**8.7-1 Act of Terrorism -- § 53a-300**

**8.7-2 Computer Crime for Terrorist Purposes --  
§ 53a-301**

## 8.7-1 Act of Terrorism -- § 53a-300

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with an act of terrorism. The statute defining this offense reads in pertinent part as follows:

a person is guilty of an act of terrorism when such person, with intent to intimidate or coerce the civilian population or a unit of government, commits a felony involving the unlawful use or threatened use of physical force or violence.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Felony

The first element is that the defendant committed a felony involving the unlawful use or threatened use of physical force or violence. The state alleges that the defendant committed the crime of <insert name of felony>, which is a felony.

Proof of this element will depend on your deliberations on count \_\_\_. If, under that count, you find that the defendant committed <insert name of felony>, then this element of this count will be proved.<sup>1</sup>

It must also be proved that this felony involved the unlawful use or threatened use of physical force or violence. "Unlawful" means without legal authority. "Physical force" and "violence" are common, readily understandable terms. To commit an act by physical force or violence means to wrongfully use physical force against the property or person of another. Either can be applied to any person or object by any means. Actual harm or damage need not result. These terms are general and unlimited in regards to the means by which either can be applied or inflicted. As applied here the use of physical force or violence may be actual or threatened.

You must be satisfied beyond a reasonable doubt that the felony committed by the defendant involved the unlawful use or threatened use of physical force or violence.

### Element 2 - Intent

The second element is that the defendant, in committing this felony, acted with the specific intent to intimidate or coerce the civilian population or a unit of government. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant committed a felony involving the unlawful use or threatened use of physical force or violence, and 2) (he/she) did so with the specific intent to intimidate or coerce the civilian population or a unit of government.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of an act of terrorism, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If the felony has not been charged in a separate count, the court will have to instruct on the elements in conjunction with this offense.

### *Commentary*

#### *Sentencing*

Subsection (b) provides that "the court shall, in lieu of imposing the sentence authorized for the crime under section 53a-35a, impose the sentence of imprisonment authorized by said section for the next more serious degree of felony." Public Acts, Spec. Sess., January, 2008, No. 08-1, § 11, deleted the portion that limited the enhanced sentence to when "the court is of the opinion that such person's history and character and the nature and circumstances of such person's criminal conduct indicate that an increased penalty will best serve the public interest."

## 8.7-2 Computer Crime for Terrorist Purposes -- § 53a-301

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with computer crime in furtherance of terrorist purposes. The statute defining this offense reads in pertinent part as follows:  
a person is guilty of computer crime in furtherance of terrorist purposes when such person, with intent to intimidate or coerce the civilian population or a unit of government, commits computer crime.<sup>1</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed computer crime**

The first element is that the defendant committed a computer crime.

*<See 9.6 Computer Crimes and 10.5 Internet Crimes for the various computer crimes.>*

### **Element 2 - Intent**

The second element is that the defendant specifically intended to intimidate or coerce the civil population or a unit of government. "Intimidate" has its ordinary meaning. "Coerce" means to compel or induce another to do something, or not to do something, by instilling fear in that person. "Civilian population" has its ordinary meaning. "Unit of government" means any unit of any branch, subdivision or agency of the state, or any locality within it. *<Insert specific allegations.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant committed a computer crime, and 2) (he/she) did so with the intent to intimidate or coerce the civil population or a unit of government.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of computer crime for a terrorist purpose, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> As defined in General Statutes § 53a-251, or a violation of any provision of General Statutes § 53-451.

### *Commentary*

#### ***Sentence Enhancer***

General Statutes § 53a-301 (b) provides for a mandatory minimum of five years imprisonment if the offense "is directed against any public agency, as defined in section 1-200,

that is charged with the protection of public safety." General Statutes § 1-200 (1) defines "public agency" as:

- Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions.
- Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law.
- Any "implementing agency," which is defined in General Statutes § 32-222 (k) as one of the following agencies designated by a municipality: (1) An economic development commission; redevelopment agency; sewer authority or sewer commission; public works commission; water authority or water commission; port authority or port commission or harbor authority or harbor commission; parking authority or parking commission; (2) a nonprofit development corporation; or (3) any other agency designated and authorized by a municipality to undertake a project and approved by the commissioner.

The jury must find this fact beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## **8.8 RACKETEERING**

### **8.8-1 Corrupt Organizations and Racketeering Activity (CORA) -- § 53-395 (c)**

## 8.8-1 Corrupt Organizations and Racketeering Activity (CORA) -- § 53-395 (c)

Revised to December 1, 2007 (modified June 13, 2008)

The defendant has been charged [in count \_\_\_] with violating the Corrupt Organizations and Racketeering Activity statute, also known as CORA. The statute defining this offense reads in pertinent part as follows:

It is unlawful for any person employed by, or associated with, any enterprise to knowingly conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity, or through the collection of an unlawful debt.

This section, in essence, makes it a crime to conduct or participate in an enterprise through a pattern of certain violations of law known as "racketeering activity." In this case, the charged racketeering activity includes *<identify each crime alleged to be an incident of racketeering activity>*.

The word "racketeering" has certain implications in our society. Use of that term in this statute and this courtroom, however, should not be regarded as having anything to do with your determination of whether the guilt of this defendant has been proved. The term "racketeering" is used only by the legislature to describe certain violations of the law contained in the statute.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Existence of an enterprise**

The first element is that an enterprise existed. An enterprise under the statute need not have a particular name, or for that matter, any name at all. Nor must it be registered or licensed as an enterprise. It does not have to be a commonly recognized legal entity, such as a corporation, a trade union, a partnership or the like. An "enterprise," as defined in the CORA statute, means "any individual, sole proprietorship, corporation, business trust, union chartered under the laws of this state or [any] other legal entity, or any unchartered union, association or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit enterprises and governmental, as well as other entities. In determining whether any unchartered union, association or group of individuals exists, factors which may be considered as evidence of association include, but are not limited to: (1) A common name or identifying sign, symbols or colors and (2) rules of behavior for individual members."<sup>1</sup>

Thus, an enterprise may be a single individual or a group of people informally associated together for the common purpose of engaging in a course of conduct. In addition to having a common purpose, this group of people must have a core of personnel who function as a continuing unit. Furthermore, the enterprise must continue to exist in substantially similar form throughout the period charged. This does not mean that the membership must remain exactly identical, but the enterprise must have a recognizable core that continues throughout the period charged.

The information alleges that the following enterprise existed: *<describe the alleged enterprise>*.

In the special verdict form that will be reviewed later, you will be asked to report whether or not the jury unanimously finds that this alleged enterprise has been proved to exist beyond a reasonable doubt.

[*<Insert if appropriate:>* Although the state contends that this group of individuals was known as *<insert alleged name of enterprise>*, you need not determine that the individuals actually referred to themselves by that name in order to find that an enterprise existed.]

In summary, in order to determine that an enterprise existed, you must find beyond a reasonable doubt that the defendant was acting in (his/her) individual capacity or that there was, in fact, a group of people characterized by 1) a common purpose or purposes, 2) an ongoing formal or informal organization or structure, and 3) core personnel who functioned as a continuing unit within the time frame alleged in the information.

### **Element 2 - Association with the enterprise**

The second element is that the defendant was associated with or was employed by the enterprise.

[*<Insert if appropriate:>* When the enterprise is alleged to be the defendant acting as an individual, the association is self-evident. In this case, the state contends that the defendant is the enterprise.]

[*<Insert if appropriate:>* The state contends that the defendant was associated with an enterprise described as a group of individuals known as *<insert alleged name of enterprise>*.]

It is not required that the defendant have been associated with the enterprise for the entire time that the enterprise existed. It is required, however, that the state prove beyond a reasonable doubt that at some time during the period indicated in the information the defendant was associated with the enterprise.

The state must show that the defendant's association with the enterprise was knowing -- that is, made with the knowledge of the existence of the criminal enterprise through a general awareness of some of its purposes, activities and personnel. If you find that the state has proved beyond a reasonable doubt that the defendant was knowingly associated with the enterprise, then the second element is satisfied.

### **Element 3 - Pattern of racketeering activity**

The third element is that the defendant wilfully engaged in a pattern of racketeering activity. "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to intentionally aid, solicit, coerce or intimidate another person to commit any crime which, at the time of its commission, was a felony chargeable by indictment or information under the provisions of the general statutes then applicable. *<Insert underlying crimes as appropriate.>*<sup>2</sup>

A "pattern of racketeering activity" means engaging in at least two incidents of racketeering activity that have the same or similar purposes, results, participants, victims or methods of

commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided the latter or last of such incidents occurred after October 1, 1982, and within five years after a prior incident of racketeering activity.<sup>3</sup>

The incidents of racketeering activity charged are: *<Insert underlying crimes as necessary and take judicial notice that they are felonies.>*

The elements of each of these alleged incidents will be covered in a few minutes. You must be unanimous as to which incidents of racketeering activity have been proved beyond a reasonable doubt before you may find that the third element of CORA has been satisfied. In other words, there must be at least two specific incidents of racketeering activity that all of you believe were committed by the defendant in order to convict the defendant under CORA.

### **Difference between "enterprise" and "pattern of racketeering"**

An enterprise, as used in the statute, is not the same thing as the pattern of racketeering activity. In order to convict, the state must prove both that there was an enterprise and that the enterprise's affairs were conducted through a pattern of racketeering activity. The enterprise in this case is alleged to be (the defendant himself / a group of individuals who associated together for a common purpose of engaging in a course of conduct). A pattern of racketeering activity, on the other hand, is a series of criminal acts.

The existence of the enterprise is proved by evidence of an ongoing organization, formal or informal, with a common purpose and by evidence that various core personnel of the group functioned as a continuing unit.

The pattern of racketeering activity, on the other hand, is proved by evidence of a minimum of two incidents of racketeering which the participant(s) in the enterprise committed.

The proof used to establish those separate elements may be the same or overlapping -- for example, if you find that an ongoing enterprise existed, the existence of this enterprise may help establish that the separate incidents of racketeering activity were part of a "pattern" of continuing criminal activity. Nevertheless, you should bear in mind that proof of an enterprise does not necessarily establish proof of a pattern of racketeering activity, and vice versa. The enterprise is a separate element which must be proved by the state.

### **Element 4 - Knowingly conducted or participated in enterprise through pattern of racketeering**

The fourth element is that the defendant, by engaging in racketeering activities, knowingly conducted or participated in the enterprise. A person acts "knowingly" with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists. *<See Knowledge, Instruction 2.3-3.>*

It is not enough that there be an enterprise and that the defendant engaged in a pattern of racketeering activity. More is required. There must be a meaningful connection between the

defendant's racketeering acts and the affairs of the enterprise. The defendant must have conducted or participated in the enterprise by engaging in the pattern of racketeering activity.

It is not necessary, however, that the racketeering activity directly further the enterprise's activities. It is enough that the defendant's activity was related to the enterprise's activities or that the defendant was enabled to commit the racketeering activity solely by virtue of (his/her) position in the enterprise.

### **Incidents of racketeering activity**

I will now instruct you on the elements of the alleged incidents of racketeering activity charged in the information. You may not convict the defendant unless you have found that (he/she) committed or conspired to commit at least two incidents of racketeering activity.

The information charges the defendant with *<insert number>* incidents of racketeering activity. I will now instruct you on the law relating to each of the charged incidents.

### **Incident *<insert number>* of racketeering activity**

The (first / next) alleged incident of racketeering activity reads as follows: *<Read incident of racketeering activity.>*

The state alleges that the defendant (committed / attempted to commit / conspired to commit / intentionally aided, solicited, coerced or intimidated another person to commit) *<identify underlying crime and refer to instruction on that crime and then present the facts as presented by the state and the defendant>*.<sup>4</sup>

If you find that the state has proved the elements of *<identify underlying crime>* beyond a reasonable doubt, then you will find this incident of racketeering activity proved. If you do not find that the state has proved those elements beyond a reasonable doubt, then you would find that the racketeering act of *<identify underlying crime>* has not been proved.

*<Repeat for each charged incident of racketeering activity.>*

Again, the state must prove beyond a reasonable doubt that the defendant engaged in at least two incidents of racketeering activity that have the same or similar purposes, results, participants, victims or methods of commission or otherwise are interrelated by the distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided the latter or last of such incidents occurred after October 1, 1982, and within five years after a prior incident of racketeering activity.

Remember, you must agree unanimously on at least two specific incidents and you are going to be provided a special verdict form for that purpose.

### **Conclusion**

If you find that the state has proved beyond a reasonable doubt each of the four elements of the crime of violating the CORA statute, including the finding beyond a reasonable doubt of two or more incidents of racketeering activity, then you shall find the defendant guilty of a crime under

CORA. If you find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty of a crime under CORA.

---

<sup>1</sup> General Statutes § 53-394 (c).

<sup>2</sup> General Statutes § 53-394 (a) specifies the felonies that qualify as racketeering activities.

<sup>3</sup> General Statutes § 53-394 (e).

<sup>4</sup> If the underlying felony is an attempt crime, the court must instruct the jury on the definition of criminal attempt. *Small v. Commissioner of Correction*, 286 Conn. 707, 727 (2008). See Attempt -- § 53a-49 (a) (1), Instruction 3.2-1 and Attempt -- § 53a-49 (a) (2), Instruction 3.2-2.

#### ***Commentary***

The information may charge the defendant with "racketeering acts" which encompass several incidents of racketeering activity. In this case, the jury instruction should make clear the difference between "racketeering acts" as used in the information and each incident of racketeering activity as defined by statute.

## **8.9 MISCELLANEOUS PUBLIC SAFETY OFFENSES**

- 8.9-1 Interfering with Emergency Call -- § 53a-183b**
- 8.9-2 Escape from Certain Institutions -- § 53-164**
- 8.9-3 Aiding Escape of Mentally Ill or Drug Dependent Person -- § 53a-171a**
- 8.9-4 Loitering on School Grounds -- § 53a-185**
- 8.9-5 Hazing -- § 53-23a**
- 8.9-6 Noncompliance with DNA Sampling -- § 54-102g (g)**
- 8.9-7 Noncompliance with Venereal Disease or HIV Exam -- § 54-102a (c)**
- 8.9-8 Cruelty to Animals -- § 53-247**

## 8.9-1 Interfering with Emergency Call -- § 53a-183b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with interfering with an emergency call. The statute defining this offense reads in pertinent part as follows:

a person is guilty of interfering with an emergency call when such person, with the intent of preventing another person from making or completing (a 911 telephone call / telephone call or radio communication to any law enforcement agency) to (request police protection / report the commission of a crime), (physically / verbally) prevents or hinders such other person from making or completing such (telephone call / radio communication).

For you to find the defendant guilty of this charge, the state must prove the following elements<sup>1</sup> beyond a reasonable doubt:

### **Element 1 - Prevented call**

The first element is that the defendant (physically / verbally) prevented or hindered another person from making or completing a (911 telephone call / telephone call or radio communication to any law enforcement agency).

### **Element 2 - Purpose of call**

The second element is that the purpose of such call was to (request police protection / report the commission of a crime).

### **Element 3 - Intent**

The third element is that the defendant acted with the specific intent to prevent the other person from making or completing such call. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (physically / verbally) prevented or hindered another person from making or completing a (911 telephone call / telephone call or radio communication to any law enforcement agency), 2) the call was to (request police protection / report the commission of a crime), and 3) (he/she) did so with the specific intent to prevent the other person from making or completing such call.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of interfering with an emergency call, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See *State v. Solomon*, 103 Conn. App. 530, 538 (2007).

## 8.9-2 Escape from Certain Institutions -- § 53-164

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with aiding or abetting escape. The statute defining this offense imposes a punishment on any person who *<insert as appropriate:>*

- aids or abets any inmate in escaping from the (Connecticut Juvenile Training School / Southbury Training School).
- knowingly harbors any inmate from the (Connecticut Juvenile Training School / Southbury Training School).
- aids in abducting any inmate from the (Connecticut Juvenile Training School / Southbury Training School) who has been paroled from the person or persons to whose care and service such inmate has been legally committed.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable that *<insert one of the following:>*

- the defendant aided or abetted an inmate in escaping from the (Connecticut Juvenile Training Center / Southbury Training School). Aiding or abetting here have their ordinary meanings, that is, to intentionally help or assist. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>* "Inmate" means a person confined in the (Connecticut Juvenile Training Center / Southbury Training School). "Escape" means the unlawful departure from the physical limits of custody.
- the defendant knowingly harbored an inmate who had escaped from the (Connecticut Juvenile Training School / Southbury Training School). Inmate means a person confined in the (Connecticut Juvenile Training Center / Southbury Training School). Escape means the unlawful departure from the physical limits of custody. Harbor means to shelter or give refuge to. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. *<See Knowledge, Instruction 2.3-3.>*
- the defendant aided in abducting an inmate of the (Connecticut Juvenile Training School / the Southbury Training School) who had been paroled from the person or persons to whose care and service such inmate had been legally committed. An inmate is paroled when the inmate, while still in legal custody, is released from physical confinement pursuant to a lawful order. "Abduct" means to restrain a person with intent to prevent (his/her) liberation by either (A) secreting or holding (him/her) in a place where (he/she) is not likely to be found, or (B) using or threatening to use physical force or intimidation. "Restrain" means to restrict a person's movements intentionally and unlawfully in such a manner as to interfere substantially with (his/her) liberty by moving (him/her) from one place to another, or by confining (him/her) either in the place where the restriction commences or in a place to which (he/she) has been moved, without consent. As used herein "without consent" means, but is not limited to, (A) deception and (B) any means whatever, including acquiescence of the person, if (he/she) is a child less than sixteen years old or an incompetent person and the parent, guardian or other person or institution having lawful control or custody of (him/her) has not acquiesced in the movement or confinement.<sup>1</sup>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant *<summarize specific allegations>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of escape, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> These terms are defined in General Statutes § 53a-91 (1) and (2). See also Kidnapping in the Second Degree, Instruction 6.5-3.

## 8.9-3 Aiding Escape of Mentally Ill or Drug Dependent Person -- § 53a-171a

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with aiding escape from a (hospital / sanitarium<sup>1</sup>). The statute defining this offense reads in pertinent part as follows:

a person is guilty of aiding escape from a (hospital / sanitarium) when he aids the escape from a (hospital / sanitarium) of any person committed thereto as (mentally ill / drug dependent).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Aided escape

The first element is that the defendant aided the escape of a person from a (hospital /sanitarium). Aiding or abetting here have their ordinary meaning, that is, to intentionally help or assist. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

"Escape" means the unlawful departure from the physical limits of custody.

### Element 2 - Of mentally ill / drug dependent person

The second element is that the person whose escape was aided had been committed by a lawful order to such institution as (mentally ill / drug dependent). The state does not have to prove that such person was in fact (mentally ill / drug dependent), only that the person was committed as (mentally ill / drug dependent).

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant aided the escape of a person from a (hospital /sanitarium), and 2) that person had been committed to the (hospital /sanitarium), as (mentally ill / drug dependent).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of aiding the escape of a (mentally ill / drug dependent) person, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The statute uses the word "sanatorium." "Sanitarium" is the proper American spelling of the word. "Sanatorium" is a British variant spelling.

## 8.9-4 Loitering on School Grounds -- § 53a-185

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with loitering on school grounds. The statute defining this offense reads in pertinent part as follows:

a person is guilty of loitering on school grounds when he loiters or remains in or about a school building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or any other license or privilege to be there.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Loitering on school grounds**

The first element is that the defendant loitered or remained in or about a school building or grounds. "Loiter" means to stand around or move slowly about; to spend time idly. "Remain" means to stay in the same place or to stand around. The term "in or about" means within or in close proximity to.

### **Element 2 - For no reason**

The second element is that the defendant had no reason, no relationship involving custody of or responsibility for a pupil, nor any other license or privilege to be there. "Custody" means control of or in the care of. "License or privilege" means permission or consent to be present.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was loitering or remaining in or about a school building or grounds, and 2) (he/she) had no reason, no relationship involving custody of or responsibility for a pupil, nor any other license or privilege to be there.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of loitering on school grounds, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 8.9-5 Hazing -- § 53-23a

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with hazing. The statute defining this offense reads in pertinent part as follows:

no (student organization / member of a student organization) shall engage in hazing any member or person pledged to be a member of the organization. The implied or express consent of the person shall not be a defense in any action brought under this section.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - By student organization or member**

The first element is that at the time of the hazing the defendant was a (student organization / member of a student organization). "Student organization" means a fraternity, sorority or any other organization organized or operating at an institution of higher education.<sup>1</sup>

### **Element 2 - Hazing**

The second element is that the defendant engaged in hazing.<sup>2</sup> "Hazing" means any action which (recklessly / intentionally) endangers the health or safety of a person for the purpose of initiation, admission into or affiliation with, or as a condition for continued membership in a student organization. The term shall include, but not be limited to *<insert as appropriate:>*

- requiring indecent exposure of the body.
- requiring any activity that would subject the person to extreme mental stress, such as sleep deprivation or extended isolation from social contact.
- confinement of the person to unreasonably small, unventilated, unsanitary or unlighted areas.
- any assault upon the person. This means the intentional infliction of physical injury.
- requiring the ingestion of any substance or any other physical activity which could adversely affect the health or safety of the individual.

The term shall not include an action sponsored by an institution of higher education which requires any athletic practice, conditioning, or competition or curricular activity. "Initiation" means a formal ceremonial admission into a student organization. "Affiliation" means to be in close association or connection to a student organization.

*<Insert as appropriate:>*

- A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<See Recklessness, Instruction 2.3-4.>*
- A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

**Element 3 - Of a member or pledge**

The third element is that the person hazed was either a member or a person pledged to be a member of the student organization. The implied or express consent of the member or pledge is not a defense to this prosecution.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was a (student organization / member of a student organization), 2) (he/she/it) engaged in hazing, and 3) *<insert name of person subjected to hazing>* was a member or pledge of the organization.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of hazing, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53-23a (a) (2).

<sup>2</sup> Hazing is defined in § 53a-23a (a) (1).

## 8.9-6 Noncompliance with DNA Sampling -- § 54-102g (i)

Revised to May 10, 2012

The defendant is charged [in count \_\_\_] with refusal to submit a sample for DNA testing. The statute defining this offense reads in pertinent part as follows:

any person who (refuses to submit to the taking of a blood or other biological sample / wilfully fails to appear at the time and place specified for the taking of a blood or other biological sample) shall be guilty.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Test required

The first element is that the defendant was required to submit to the taking of a blood or other biological sample for DNA analysis. A person is required to submit to such a test after being convicted of certain crimes, including <insert appropriate crime.> The defendant is alleged to have been convicted of <insert crime>. To be "convicted" of a crime means that a finding of guilty has been entered against a defendant in a criminal or motor vehicle case.<sup>1</sup>

### Element 2 - Refused

The second element is that the defendant

- refused to submit to the test.
- wilfully failed to appear at the time and place specified for the test. An act is done wilfully if done knowingly, intentionally, and deliberately.

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was required to submit to the taking of a blood or other biological sample for DNA analysis, and 2) (he/she) (refused to submit to the test / wilfully failed to appear for the test).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of noncompliance with DNA sampling, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The state must prove that the defendant qualifies for the appropriate status, but not the underlying applicable predicate. The court should inquire whether the parties are willing to stipulate that the defendant had been convicted of the relevant offense. The statute also applies to defendants who have been found not guilty by reason of mental disease or defect of certain crimes. Tailor this element accordingly.

*Commentary*

The statute requires DNA testing of defendants convicted of certain crimes and criminalizes the refusal to submit to such a test. Tailor the instruction to the particular status of the defendant.

## **8.9-7 Noncompliance with Venereal Disease or HIV Exam -- § 54-102a (c)**

Revised to June 13, 2008

The defendant is charged [in count \_\_\_] with refusal to comply with a court order to submit to a test to determine whether (he/she) is suffering from (venereal disease / Acquired Immune Deficiency Syndrome (AIDS) / Human Immunodeficiency Virus (HIV)). The statute defining this offense reads in pertinent part as follows:

any person who fails to comply with any order of any court under the provisions of this section shall be guilty.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Test ordered**

The first element is that the defendant was ordered by a court to submit to an examination for (venereal disease / AIDS / HIV).

### **Element 2 - Failure to comply**

The second element is that the defendant failed to comply with the order.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was ordered by a court to submit to an examination for (venereal disease / AIDS / HIV), and 2) (he/she) failed to comply with the order.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of noncompliance with a court order requiring an examination for (venereal disease / AIDS / HIV), then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

This offense is predicated on a court order which can be issued when a case is pending involving certain offenses. A venereal disease examination may be ordered when a defendant has been charged with any violation of General Statutes §§ 53a-65 through 53a-89. An AIDS/HIV test may be ordered when a defendant has been charged with a violation of General Statutes §§ 53-21 or 53a-65 through 53a-89 that involved a sexual act, as defined by § 54-102b. Tailor the instruction to the specific court order.

## 8.9-8 Cruelty to Animals -- § 53-247

Revised to December 1, 2007

**Note: This instruction includes only select subsections of the statute.**

### **A. If charged with a violation of § 53-247 (b):**

The defendant is charged [in count \_\_\_] with cruelty to animals. The statute defining this offense reads in pertinent part as follows:

a person is guilty of cruelty to animals who maliciously and intentionally maims, mutilates, tortures, wounds or kills an animal.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

#### **Element 1 - Intentional malice**

The first element is that the defendant acted with intentional malice. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such a result. <See *Intent: Specific, Instruction 2.3-1*.>

To act "with malice" means to act with some improper or unjustifiable or harmful motive including, but not limited to, the desire to cause pain, injury or distress to another.

#### **Element 2 - Injury**

The second element is that the animal was (maimed / mutilated / tortured / wounded / killed) by the defendant. <Insert appropriate definition(s):>

- To "maim" means to seriously injure or disfigure the animal.
- To "mutilate" means to cut off or remove an essential part of the animal.
- To "torture" means to inflict intense pain on the animal.
- To "wound" or "kill" have their ordinary meanings.

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant acted with intentional malice, and 2) the defendant (maimed / mutilated / tortured / wounded / killed) the <identify animal>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of cruelty to animals, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### **B. If charged with a violation of § 53-247 (d) or (e):**

The defendant is charged [in count \_\_\_] with cruelty to animals. The statute defining this offense reads in pertinent part as follows:

a person is guilty of cruelty to animals who intentionally (injures / kills)<sup>1</sup> <insert as appropriate:>

- any animal while such animal is in the performance of its duties under the supervision of a peace officer.
- a dog that is a member of a volunteer canine search and rescue team while such dog is in the performance of its duties under the supervision of the active individual member of such team.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

**Element 1 - Intentional injury or killing**

The first element is that the defendant intentionally (injured / killed) the (animal / dog). A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

**Element 2 - Status of animal**

The second element is that <insert as appropriate:>

- the animal is in the performance of its duties under the supervision of a peace officer.<sup>2</sup> <Identify the specific type of peace officer.>
- the dog is a member of a volunteer canine search and rescue team and such dog was in the performance of its duties under the supervision of the active individual member of such team. A "volunteer canine search and rescue team" is defined by statute "an individual and a dog (A) appropriately trained and certified to engage in search and rescue operations by a nonprofit canine search and rescue organization that is a member of the National Association of Search and Rescue, or its successor organization, and (B) who jointly engage in such operations at the request of a police or fire department and provide services without compensation."<sup>3</sup>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant intentionally (injured / killed) the (animal / dog), and 2) the (animal / dog) was in the performance of its duties (under the supervision of a peace officer / under the supervision of an active individual member of a canine search and rescue team).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of cruelty to animals, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

<sup>1</sup> Subsection (d) prohibits intentional injury; subsection (e) prohibits intentional killing.

<sup>2</sup> This statute specifically incorporates the definition of "peace officer" found in General Statutes § 53a-3 (9).

<sup>3</sup> General Statutes § 5-249, which is specifically incorporated in this statute.

*Commentary*

General Statutes § 53-247 (b) provides the following exception to culpability: "The provisions of this subsection shall not apply to any licensed veterinarian while following accepted standards of practice of the profession or to any person while following approved methods of slaughter under section 22-272a, while performing medical research as an employee of, student in or person associated with any hospital, educational institution or laboratory, while following generally accepted agricultural practices or while lawfully engaged in the taking of wildlife." "[W]here exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000).

# **PART 9: CRIMES AGAINST PROPERTY**

**9.1 LARCENY AND OTHER THEFTS**

**9.2 BURGLARY**

**9.3 ARSON**

**9.4 CRIMINAL TRESPASS**

**9.5 CRIMINAL MISCHIEF AND  
MISCELLANEOUS PROPERTY CRIMES**

**9.6 COMPUTER CRIMES**

## **9.1 LARCENY AND OTHER THEFTS**

### **9.1 Introduction to Larceny and Other Thefts**

**9.1-1 Larceny -- § 53a-119 and §§ 53a-122 through 53a-125b**

**9.1-2 Larceny of a Public Record -- § 53a-119 and § 53a-124 (a) (3)**

**9.1-3 Larceny of a Secret Scientific or Technical Process, Invention or Formula -- § 53a-119 and § 53a-124 (a) (4)**

**9.1-4 Larceny of a Motor Vehicle -- § 53a-119 and §§ 53a-122 through 53a-124**

**9.1-5 Larceny from the Person -- § 53a-119 and § 53a-123 (3)**

**9.1-6 Larceny by Embezzlement -- § 53a-119 (1) and §§ 53a-122 through 53a-125b**

**9.1-7 Larceny by Obtaining Property by False Pretenses -- § 53a-119 (2) and §§ 53a-122 through 53a-125b**

**9.1-8 Larceny by Obtaining Property by False Promise -- § 53a-119 (3) and §§ 53a-122 through 53a-125b**

**9.1-9 Larceny of an Elderly, Blind, or Physically Disabled Person -- § 53a-119 (1), (2) and (3) and § 53a-123 (a) (5)**

- 9.1-10 Larceny by Acquiring Property Lost, Mislaid or Delivered by Mistake -- § 53a-119 (4) and §§ 53a-122 through 53a-125b**
- 9.1-11 Larceny by Extortion -- § 53a-119 (5) and § 53a-122 (a) (1)**
- 9.1-12 Larceny by Defrauding a Public Community -- § 53a-119 (6) (A) and (B) and §§ 53a-122 through 53a-123**
- 9.1-13 Larceny by Defrauding a Public Community -- § 53a-119 (6) (C) and §§ 53a-122 through 53a-123**
- 9.1-14 Larceny by Theft of Services -- § 53a-119 (7) and §§ 53a-122 through 53a-125b**
- 9.1-15 Larceny by Receiving Stolen Property -- § 53a-119 (8) and §§ 53a-122 through 53a-125b**
- 9.1-16 Larceny by Shoplifting -- § 53a-119 (9) and §§ 53a-122 through 53a-125b**
- 9.1-17 Possession of a Shoplifting Device -- § 53a-127f**
- 9.1-18 Larceny by Conversion of a Motor Vehicle -- § 53a-119 (10) and §§ 53a-122 through 53a-125b**
- 9.1-19 Larceny by Obtaining Property Through Fraudulent Use of An Automated Teller Machine -- § 53a-119 (11) and §§ 53a-122 through 53a-125b**
- 9.1-20 Larceny by Library Theft -- § 53a-119 (12) and §§ 53a-122 through 53a-125b**

- 9.1-21 Larceny by Conversion of Leased Personal Property -- § 53a-119 (13) and §§ 53a-122 through 53a-125b**
- 9.1-22 Larceny by Failure to Pay Prevailing Rate of Wages -- § 53a-119 (14) and §§ 53a-122 through 53a-125b**
- 9.1-23 Larceny by Theft of Utility Service -- § 53a-119 (15) and §§ 53a-122 through 53a-125b**
- 9.1-24 Fraudulent Use of an Automated Teller Machine -- § 53a-127b**
- 9.1-25 Theft of Utility Service -- § 53a-127c (a) (1)**
- 9.1-26 Theft of Utility Service -- § 53a-127c (a) (2)**
- 9.1-27 Theft of Utility Service -- § 53a-127c (a) (3)**
- 9.1-28 Using Motor Vehicle or Vessel without the Owner's Permission -- § 53a-119b (a) and (b)**
- 9.1-29 Interfering or Tampering with a Motor Vehicle -- § 53a-119b (c) (1)**
- 9.1-30 Interfering or Tampering with a Motor Vehicle -- § 53a-119b (c) (2)**

## 9.1 Introduction to Larceny and Other Thefts

Revised to April 23, 2010

"Section 53a-119 defines the crime of larceny and sets out a nonexclusive list of ways in which that offense may be committed. One determinant of the grade of the offense of larceny is the value of the property stolen. Under our statutory scheme, the grades of that offense range from first degree larceny, which includes thefts of property exceeding \$10,000 in value, to sixth degree larceny, which includes thefts of property valued at \$250 or less. See General Statutes §§ 53a-122 through 53a-125b. In addition, § 53a-121 (a) explains how the value of property is to be ascertained. . . . Finally, § 53a-121 (b) provides that the value of each of the items alleged to have been stolen may be aggregated for purposes of determining the degree of larceny when the thefts were committed pursuant to one scheme or course of conduct." *State v. Desimone*, 241 Conn. 439, 453 (1997).

The degree of larceny depends in most cases on the type and value of the property stolen. The means by which the larceny is committed determines the degree for two offenses: larceny by extortion, which is first degree, and larceny from the person, which is second degree. If the property stolen consists of public records or scientific or technical material, it is larceny in the third degree, regardless of the value of the property. The degree for all other larceny offenses depends on the value of the property. Public Acts 2009, No. 09-138, effective October 1, 2009, increased the dollar amounts for the degrees of larceny. See chart below.

Type of property	Value of property (prior to 10/1/09)	Value of property (after 10/1/09)	Degree
Motor vehicle	> \$10,000	> \$20,000	First
	> \$5,000	> \$10,000	Second
	< \$5,000	< \$10,000	Third
From a public community	> \$2,000	> \$2,000	First
	< \$2,000	< \$2,000	Second
Public records	Any	Any	Third
Scientific / technical	Any	Any	Third
Any other property not specified above	> \$10,000	> \$20,000	First
	> \$5,000	> \$10,000	Second
	> \$1,000	> \$2,000	Third
	> \$500	> \$1,000	Fourth
	> \$250	> \$500	Fifth
	< \$250	< \$500	Sixth

### *Lesser Included Offenses*

Larceny in the first degree and stealing a firearm are separate offenses. *State v. Roy*, 34 Conn. App. 751, 769-72 (1994), rev'd on other grounds, 233 Conn. 211 (1995). "The degree of larceny is, for the most part, determined by the value of the property taken or, in some cases, by the way in which it is taken. It is not generally determined by the kind of property." *Id.*, 772.

"Thus, the legislature created other statutes that recognize that the type of property involved is, in some instances, germane to the state's penological interest." *Id.*

Simple larceny may be a lesser included offense of robbery. "The element distinguishing robbery from larceny is the use or threatened use of physical force." *State v. Preston*, 248 Conn. 472, 478 (1999) (the defendant's use of force was not sufficiently in dispute to entitle him to an instruction on larceny as a lesser included offense); *State v. Hansen*, 39 Conn. App. 384, 406-407, cert. denied, 235 Conn. 928 (1995) (conviction of both larceny and robbery was a violation of double jeopardy).

"Robbery in the first degree . . . entails simple larceny. Larceny from the person is a separate and distinct offense from that of simple larceny. Second degree larceny requires an actual trespass to the person of the victim." *State v. Ortiz*, 14 Conn. App. 493, 504, cert. denied, 209 Conn. 804 (1988); see also *State v. Littles*, 31 Conn. App. 47, 57, cert. denied, 227 Conn. 902 (1993) (larceny from the person and robbery require proof of distinct elements).

## 9.1-1 Larceny -- § 53a-119 and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** This instruction is for simple larceny, as defined in § 53a-119. Other means of committing larceny are defined in § 53a-119 (1) through (18). See subsequent instructions in this section for the specific type of larceny charged.

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

The defendant is charged [in count \_\_\_] with larceny in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person commits larceny when, with intent to *<insert as appropriate:>*

- deprive another of property,
- appropriate property to (himself /herself) or a third person, (he/she) wrongfully (takes / obtains / withholds) such property from an owner.

Larceny simply means theft or stealing. In this case, the property allegedly stolen is *<identify property>*.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Theft of property**

The first element is that the defendant wrongfully (took / obtained / withheld) property from the owner. "Wrongfully" means that the defendant had no legal justification or excuse for (taking / obtaining / withholding) the property. *<Insert appropriate definitions:>*

- "Taking" means seizing an article from the possession or control of the person entitled to it whether by force or some other unlawful means.<sup>1</sup>
- "Obtaining" includes, but is not limited to, bringing about the transfer or purported transfer of property or of a legal interest in the property from the owner to the defendant or to a third person.
- "Withholding" means wrongfully keeping property from its owner.
- "Property" includes any (money / personal property / real property / thing in action / evidence of debt or contract / article of value of any kind). [Commodities of a public utility, such as gas, electricity, steam and water also constitute property.]
- "Service" includes (labor / professional service / public utility and transportation service / the supplying of hotel accommodations / restaurant services / entertainment / the supplying of equipment for use).

"Owner" means not only the true or lawful owner, but any person who has a superior right to that of the defendant. *<Insert as appropriate:>*

- This would include persons who have possession or custody of property with the permission or authority of the true owner, such as repair persons and employees.
- It would include someone who has wrongful possession of property, from whom that property is later stolen. In other words, a person can be guilty of larceny even when (he/she) has stolen from a thief.<sup>2</sup>
- A joint owner or a common owner of property would not be guilty of larceny of that property if (he/she) took it from the other owner.<sup>3</sup>
- A creditor who has a security interest in the property, even with legal title, cannot take the property from the lawful possession of another unless (he/she) has a specific agreement to that effect. A creditor who wrongfully takes such property may be found guilty of larceny if the other elements of larceny are proved.<sup>4</sup>

### **Element 2 - Larcenous Intent**

The second element is that at the time the defendant (took / obtained / withheld) the property, (he/she) intended to *<insert as appropriate:>*<sup>5</sup>

- permanently deprive the owner of (his/her) property. To intend to "deprive" another of property means to intend to withhold or keep or cause it to be withheld from another permanently, or for so long a period or under such circumstances that the major portion of its value is lost to that person. In other words, the state must prove beyond a reasonable doubt that the defendant took the property for the purpose of keeping or using it permanently or virtually permanently, or of disposing of the property in such a way that there was a permanent or virtually permanent loss of the property to the owner.
- permanently appropriate the property to (himself / herself) or to a third person. To intend to "appropriate" property of another to oneself or a third person means to intend either to exercise control over the property, or to aid a third person to exercise control over it, permanently, or for so long a period or under such circumstances as to acquire the major portion of its economic value or benefit, or to dispose of the property for the benefit of oneself or a third person.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Element 3 - Value of property or services<sup>6</sup>**

The third element is that the property had a value that *<insert as appropriate:>*

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

[*<If there are multiple items and their values can be aggregated:>* In making this determination, you may add or aggregate the value of the property involved. You can only aggregate amounts if the thefts were committed pursuant to one scheme or course of conduct, whether from the same or several persons.]

"Value" means the market value of the property or service at the time and place of the crime. "Market value" means the price that would, in all probability, result from fair negotiations between willing buyers and sellers at the time and place of the crime. In this case, evidence has been presented that the items claimed to have been stolen have a retail price of \$<insert value>.

You are not to consider the value of the property to the owner. You are not to consider that the defendant did not realize the value of what was stolen or that (he/she) intended to steal something of lesser value. If you can determine the price the property sold for at the time of the crime, then that is the controlling value. If the market value cannot be determined, then you should consider the replacement cost of the property within a reasonable time after the crime.

[<If the property includes written instruments:> When evaluating written instruments, whether or not they have been issued or delivered, use the value printed on the instruments when such is obvious, as on some public and corporate bonds and securities. For written instruments that are evidence of a debt owed, such as checks, drafts or promissory notes, you should use the amount due or collectable. This amount is ordinarily the face amount of the debt less any part that has been paid. To evaluate a written instrument that creates or releases or discharges or otherwise affects any valuable right or privilege or obligation, you must determine the greatest amount of economic loss that the owner of the written instrument might reasonably suffer by the loss of that instrument.]

When you cannot determine that the state has proved the value of the property beyond a reasonable doubt, you must set the value at less than fifty dollars.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) wrongfully (took / obtained / withheld) property from the owner, 2) (he/she) did so with the intent to (permanently deprive the owner of (his/her) property / permanently appropriate the property to (himself / herself) or a third person), and 3) the property had a value of <insert value according to degree charged>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny in the (first / second / third / fourth / fifth / sixth) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> "Taking" is not defined in the Penal Code. The ordinary usage of "criminal taking" is "the act of seizing an article, with or without removing it, but with an implicit transfer of possession or control." *State v. Toro*, 62 Conn. App. 635, 642, cert. denied, 256 Conn. 923 (2001).

<sup>2</sup> See General Statutes § 53a-118 (b).

<sup>3</sup> See General Statutes § 53a-118 (c).

<sup>4</sup> See General Statutes § 53a-118 (d).

<sup>5</sup> The court should only instruct on the part of the statute charged, to deprive or to appropriate, and should define those terms as they are defined in the statute. *State v. Spillane*, 54 Conn. App. 201, 210-20 (1999), *aff'd* on other grounds, 257 Conn. 750 (2001).

<sup>6</sup> See General Statutes § 53a-121.

### ***Commentary***

"Larceny involves both taking and retaining. The criminal intent involved in larceny relates to both aspects. The taking must be wrongful, that is, without color of right or excuse for the act . . . and without the knowing consent of the owner . . . The requisite intent for retention is permanency." (Citations omitted.) *State v. Kurvin*, 186 Conn. 555, 568 (1982); see also *State v. Calonico*, 256 Conn. 135, 160-63 (2001) (defendant's actions in gaining control over the victim's assets demonstrated the intent to permanently retain them). To prove the element of intent within the context of larceny, the state must show that the defendant intended to deprive another person of property permanently. *State v. Harrison*, 178 Conn. 689, 694 (1979); *State v. Pompei*, 52 Conn. App. 303, 309 (1999) (reversed for not instructing that the intent was to deprive owner of property permanently).

"A bailor who takes his own property from the lawful possession of a bailee can be convicted of larceny for depriving the bailee of the value of his services, as secured by a bailee's lien on the property." *State v. Marsala*, 59 Conn. App. 135, 139, cert. denied, 254 Conn. 948 (2000).

### ***Valuation***

If there are multiple thefts, the value of all of the property may be aggregated if the jury finds that all of the property was acquired pursuant to a single scheme or course of conduct. *State v. Desimone*, 241 Conn. 439 (1997) (reversing trial court for not charging the jury that it had to first find that the stolen property was acquired pursuant to one scheme or course of conduct before it could aggregate the values). See also *State v. Browne*, 84 Conn. App. 351, 389-94, cert. denied, 271 Conn. 931 (2004) (such an instruction is not necessary when defendant is charged with a single act of theft).

On market value, see *State v. Nunes*, 58 Conn. App. 296, 302-304, cert. denied, 254 Conn. 944 (2000).

Aggregation in § 53a-121 applies equally to attempted thefts as it does to completed thefts. *State v. Brown*, 235 Conn. 502, 514-18 (1995).

## 9.1-2 Larceny of a Public Record -- § 53a-119 and § 53a-124 (a) (3)

Revised to December 1, 2007

**Note: Larceny of a public record is defined as third degree larceny in § 53a-124 (a) (3) regardless of the value of the property stolen.**

The defendant is charged [in count \_\_\_] with larceny in the third degree. The statute defining this offense reads in pertinent part as follows:

a person commits larceny in the third degree when, with intent to *<insert as appropriate:>*

- deprive another of property,
- appropriate property to (himself /herself) or a third person, (he/she) wrongfully (takes / obtains / withholds) such property from an owner.

Larceny simply means theft or stealing. In this case, the property allegedly stolen is a public record.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Theft of property**

The first element is that the defendant wrongfully (took / obtained / withheld) property from the owner.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

### **Element 2 - Larcenous intent**

The second element is that at the time the defendant (took / obtained / withheld) the property, (he/she) intended to *<insert as appropriate:>*

- permanently deprive the owner of the public record.
- permanently appropriate the public record to (himself/herself) or a third person.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

### **Element 3 - Public record**

The third element is that the property is a public record, writing or instrument kept, held or deposited according to law with or in the keeping of any public office or public servant.

*<Describe the nature of the record.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) wrongfully (took / obtained / withheld) property from the owner, 2) (he/she) did so with the intent to (permanently deprive the owner of (his/her) property / permanently appropriate the property to (himself / herself) or a third person), and 3) the property was a public record.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.1-3 Larceny of a Secret Scientific or Technical Process, Invention or Formula -- § 53a-119 and § 53a-124 (a) (4)

Revised to December 1, 2007

**Note: Larceny of a secret scientific or technical process, invention or formula is defined as third degree larceny in § 53a-124 (a) (3) regardless of the value of the property stolen.**

The defendant is charged [in count \_\_\_] with larceny in the third degree. The statute defining this offense reads in pertinent part as follows:

a person commits larceny in the third degree when, with intent to *<insert as appropriate:>*

- deprive another of property,
- appropriate property to (himself /herself) or a third person, (he/she) wrongfully (takes / obtains / withholds) such property from an owner.

Larceny simply means theft or stealing. In this case, the property allegedly stolen is a secret scientific or technical process, invention or formula.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Theft of property**

The first element is that the defendant wrongfully (took / obtained / withheld) property from the owner.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

### **Element 2 - Larcenous intent**

The second element is that at the time the defendant (took / obtained / withheld) the property, (he/she) intended to intended to *<insert as appropriate:>*

- permanently deprive the owner of (his/her) the property.
- permanently appropriate the property to (himself/herself) or a third person.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

### **Element 3 - Process, invention or formula**

The third element is that the property consists of a (sample / culture / microorganism / specimen / record / recording / document / drawing / any article, material, device or substance) which (constitutes / represents / evidences / reflects / records) a secret scientific or technical process, invention or formula or any phase or part thereof. A process, invention or formula is "secret" when it is not, and is not intended to be, available to anyone other than the owner or selected persons having access to it for limited purposes with (his/her) consent, and when it accords or may accord the owner an advantage over competitors or other persons who do not have knowledge or the benefit of it. *<Describe specific nature of property>*.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) wrongfully (took / obtained / withheld) property from the owner, 2) (he/she) did so with the intent to (permanently deprive the owner of (his/her) property / permanently appropriate the property to (himself / herself) or a third person), and 3) the property consisted of *<describe specific nature of property>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.1-4 Larceny of a Motor Vehicle -- § 53a-119 and §§ 53a-122 through 53a-124

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of larceny of a motor vehicle is determined by the value of the motor vehicle. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

The defendant is charged [in count \_\_\_] with larceny in the (first / second / third) degree. The statute defining this offense reads in pertinent part as follows:

a person commits larceny when, with intent to *<insert as appropriate:>*

- deprive another of property,
- appropriate property to (himself /herself) or a third person, (he/she) wrongfully (takes / obtains / withholds) such property from an owner.

Larceny simply means theft or stealing. In this case, the property allegedly stolen is a motor vehicle.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Theft of motor vehicle**

The first element is that the defendant wrongfully (took / obtained / withheld) a motor vehicle from the vehicle's owner. "Motor vehicle" has its ordinary meaning and includes any (construction equipment / agricultural tractor / farm implement / major component part of a motor vehicle).<sup>1</sup> *<Identify the type of vehicle allegedly stolen.>*

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

### **Element 2 - Larcenous intent**

The second element is that at the time the defendant (took / obtained / withheld) the motor vehicle, (he/she) intended to *<insert as appropriate:>*

- permanently deprive the owner of (his/her) vehicle.
- permanently appropriate the vehicle to (himself / herself) or a third person.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

[*<Insert if applicable:>* The statute defining the offense of theft of a motor vehicle provides that certain evidence, if believed, may be sufficient to establish intent.<sup>2</sup> If you find that the defendant was in control of or possessed a motor vehicle that had been subject to (forcible entry / forcible removal of the ignition / alteration, mutilation or removal of the vehicle identification number), you may then find, but are not required to, that (he/she) knew or should have known that it was stolen, and that (he/she) had the intent to (deprive the owner of the vehicle / appropriate the vehicle to (himself/herself) or a third person. The state must still prove beyond a reasonable doubt that the defendant was the person who stole the motor vehicle involved.]

### **Element 3 - Value of the motor vehicle**

The third element is that the motor vehicle had a value that *<insert as appropriate:>*

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** did not exceed \$10,000.

"Value" means the market value of the motor vehicle at the time and place of the crime.

*<Review evidence as to the value of the motor vehicle.>*

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) wrongfully (took / obtained / withheld) a motor vehicle from the owner, 2) (he/she) did so with the intent to (permanently deprive the owner of (his/her) vehicle / permanently appropriate the vehicle to (himself / herself) or a third person), and 3) the value of the motor vehicle was *<insert value according to degree charged>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny in the (first / second / third) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See General Statutes § 53a-122 (b), § 53a-123 (b) and § 53a-124 (b).

<sup>2</sup> Id.

## 9.1-5 Larceny from the Person -- § 53a-119 and § 53a-123 (3)

Revised to December 1, 2007

**Note:** Larceny from the person is defined as second degree larceny in § 53a-123 (3) regardless of the nature or value of the property stolen.

The defendant is charged [in count \_\_\_] with larceny in the second degree. The statute defining this offense reads in pertinent part as follows:

a person commits larceny when, with intent to *<insert as appropriate:>*

- deprive another of property,
- appropriate property to (himself /herself) or a third person, (he/she) wrongfully (takes / obtains / withholds) such property from an owner.

Larceny simply means theft or stealing. In this case, the defendant is charged with committing larceny by taking the property from the person of another.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Theft of property**

The first element is that the defendant wrongfully took property from the property owner.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

### **Element 2 - Larcenous intent**

The second element is that at the time the defendant took such property, (he/she) intended to *<insert as appropriate:>*

- permanently deprive the owner of (his/her) property
- permanently appropriate the property to (himself / herself) or a third person.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

### **Element 3 - From the person**

The third element is that the defendant took the property from the person of another. This means that the item taken was actually on the body or held by or was in some manner attached to the person of *<insert name of person>*. *<Describe allegations.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant wrongfully (took / obtained / withheld) property from the property owner, 2) (he/she) did so with the intent to (permanently deprive the owner of (his/her) property / permanently appropriate the property to (himself / herself) or a third person), and 3) (he/she) took the property from *<insert name of person>*'s person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary***

"The stealing of property from the person has been from an early period under the English statutes treated as a much graver and more heinous offense than ordinary or common theft -- partly by reason of the ease with which it could be perpetrated and the difficulty of guarding against it, and partly because of the greater liability of endangering the person or life of the victim." (Internal quotation marks omitted.) *State v. Arena*, 33 Conn. App. 468, 486 (1994), aff'd, 235 Conn. 67 (1995). See also *State v. Wright*, 46 Conn. App. 616, 619-20 (1997), aff'd by 246 Conn. 132 (1998) (the statute is not unconstitutional simply because it imposes a higher penalty than robbery in the third degree, which requires force).

Larceny from the person requires an actual trespass to the person of the victim. *State v. Crowe*, 174 Conn. 129, 134 (1977). In *State v. Arena*, supra, 33 Conn. App. 489, it was held to be a trespass from the person when the defendant demanded at gunpoint that a store clerk retrieve money from the cash register and then snatched it from her hand. "No physical contact is necessary. Mere compulsion by implicit threat to hand over the property is sufficient to meet the statutory requirement that the property be taken from the person of another and would, therefore, constitute a trespass of the person." See also *State v. Felder*, 95 Conn. App. 248, 259, cert. denied, 279 Conn. 905 (2006) (trespass of the person does not require that the property be taken "against the will" or "forcefully"; wrongful means without legal justification, whether by force or some other means).

## 9.1-6 Larceny by Embezzlement -- § 53a-119 (1) and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

The defendant is charged [in count \_\_\_] with embezzlement in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person commits embezzlement when (he/she) wrongfully appropriates to (himself/herself) or to another property of another in (his/her) care or custody.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Property was in the care or custody of the defendant**

The first element is that the defendant must have received the property into (his/her) care and custody. This means that (he/she) must have received the property with the understanding that (he/she) would keep it in (his/her) possession or control or that (he/she) would relinquish control of it only for the purpose for which the property had been entrusted to (him/her). *<Describe the allegations of custody.>*

[*<If there is an issue as to whether the parties were in the relationship of debtor/creditor:>* The relationship between a debtor and creditor does not give rise to embezzlement, even though the debtor may receive the creditor's money and use it for a different purpose than contemplated. The loan was received by the debtor for the purpose of using the money for (his/her) own benefit, not that of the creditor.]

### **Element 2 - Wrongfully appropriated property**

The second element is that the defendant wrongfully appropriated the property for (himself/herself) or another person. A person who has been entrusted with the care or custody of property has a duty to use the property only for the purpose intended. The crime occurs when a person departs from this legal duty to use the property only for the benefit of the owner, and instead appropriates it to (his/her) own use or that of some person other than the owner, contrary to the purpose for which (he/she) was entrusted with the property.

"Wrongfully" as used in the statute means without any legal justification or excuse. "To appropriate property of another to oneself or a third person" means *<insert as appropriate:>*

- to exercise control over it or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit. This means that the property has remained in the possession of the defendant, and the owner was permanently deprived of the use or

control of the property, or deprived of it for so extended a period of time or under such circumstances that the major portion of the economic value or benefit of the property had been acquired by the defendant or some third person.

- to dispose of the property for the benefit of oneself or a third person. The act of disposition is itself sufficient to constitute an appropriation under the statute. To dispose of property means to put it beyond the control of the possessor. A sale or other transfer of property would be a disposition of it. A use of the property that substantially consumes it or permanently transforms its original nature would be a disposition of it.

[<If the disposition was temporary:> When there has been a disposition of the property, it does not matter whether it is permanent or temporary or whether the property may ultimately have been restored to the owner with no diminution in value. Even a temporary disposition of the property resulting in no loss to the owner, accompanied by the necessary fraudulent intent, would support a charge of embezzlement.]

[<If property was appropriated for security for a loan:> It would be a disposition of the property if a person pledged property in (his/her) care or custody as security for a loan to (himself/herself) or another, even if (he/she) expected ultimately to get the property back by paying off the loan and restoring the property to the owner. The unauthorized transfer of the property for such a purpose would constitute a disposition of it even though the embezzler may have retained some rights to the property under the conditions of the loan agreement.]

### **Element 3 - Larcenous Intent**

The third element is that at the time the defendant took the property, (he/she) had the specific intent to appropriate it to (himself/herself) or a third person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.> The defendant need not have intended to permanently deprive the owner of the property. (He/She) need only to have appropriated the property to (his/her) own use.<sup>1</sup>

### **Element 4 - Value of the property<sup>2</sup>**

The fourth element is that the property had a value that <insert as appropriate:>

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

<See Larceny, Instruction 9.1-1, for a full explanation of this element.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) received the property into (his/her) care and custody, 2) (he/she) subsequently wrongfully appropriated the property to (himself/herself) or another person, 3) (he/she) did so with the specific intent to

appropriate the property to (his/her) own use or to dispose of it, and 4) that the value of the property was *<insert value according to degree charged>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of embezzlement, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> "To appropriate" for embezzlement means either to intend to deprive permanently or to dispose of the property for the benefit of oneself or others. *State v. Wieler*, 35 Conn. App. 566, 577 (1994), *aff'd*, 233 Conn. 552 (1995) (court properly refused defendant's request to instruct on intent to deprive permanently, when state had not proceeded under that theory). "The crime of embezzlement is consummated where . . . the defendant, by virtue of his agency or other confidential relationship, has been entrusted with the property of another and wrongfully converts it to his own use." *State v. Lizzi*, 199 Conn. 462, 467 (1986).

<sup>2</sup> If the victim is over the age of sixty years, blind or physically disabled, it is second degree larceny regardless of the value of the property. General Statutes § 53a-123 (a) (5). See Larceny of an Elderly, Blind, or Physically Disabled Person, Instruction 9.1-9.

#### ***Commentary***

"Embezzlement is a purely statutory offense, rather than a common-law crime." *State v. Wieler*, *supra*, 35 Conn. App. 577.

A corporate stockholder is not the "owner" of the corporate property, so he could be held liable for embezzling from the corporation. *State v. Radzvilowicz*, 47 Conn. App. 1, 18-19, cert. denied, 243 Conn. 955 (1997).

## 9.1-7 Larceny by Obtaining Property by False Pretenses -- § 53a-119 (2) and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

The defendant is charged [in count \_\_\_] with larceny by obtaining property by false pretenses in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person obtains property by false pretenses when, by any false token, pretense or device, (he/she) obtains from another any property, with intent to defraud (him/her) or any other person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Obtained property of another**

The first element is that the defendant obtained property from the property owner.

"Obtaining" property includes, but is not limited to, bringing about the transfer of a legal interest in the property from the owner to the defendant or to a third person. If the legal title or ownership of the property or some legal interest in the property is transferred, such a transfer would constitute "obtaining" under the statute. The property does not need to be physically obtained. If the owner delivered the property intending to transfer legal ownership or some legal interest in the property, sufficient transfer would have occurred.

"Property" includes any (money / personal property / real property / thing in action / evidence of debt or contract / article of value of any kind). [Commodities of a public utility, such as gas, electricity, steam and water also constitute property.]

"Owner" means not only the true or lawful owner, but any person who has a superior right to that of the defendant.

### **Element 2 - By false pretenses or false token or device**

The second element is that the defendant obtained the property by means of (false pretenses / a false token or device). *<Insert appropriate definition:>*

- "False token or device" means a tangible object or symbol, commonly accepted by the public for what it purports to represent, but which had been falsified or counterfeited. False measures, weights, or scales, counterfeit money or stamps, marked cards or loaded

dice would be examples of false tokens or devices. *<Describe alleged false token or device.>* A mere verbal misrepresentation would not constitute a false token or device.

- "False pretense" means a false representation of fact. Since nothing to happen in the future can properly be referred to as a fact, the representation must relate to past or present circumstances and not to future events. A representation may be made in writing, verbally, or even by actions or conduct. It is an express or implied assertion of a fact upon which it is expected that others will rely. Usually a representation takes the form of a statement of fact, oral or written, but it may involve conduct only. Because a false pretense refers to past or existing facts, a mere promise to do something in the future is not a false pretense. Furthermore, a mere statement of opinion, as distinguished from a statement of fact, is not a false pretense. Puffing, exaggeration, praise of an article for the purpose of selling it, or giving an opinion as to the value or worth of property are not ordinarily a sufficient basis for a charge of false representation. Specific statements regarding the quantity, weight, manufacture or composition of an article are statements of fact sufficient to support such a charge.

The (false pretense / false token or device) must be the means by which the defendant obtains the property. The owner must rely upon it in parting with (his/her) property. Obviously, if the owner knew the pretense or token was false, (he/she) would not have relied upon it. On the other hand, the (false pretense / false token or device) need not be the sole cause inducing the owner's action. As long as (his/her) reliance on the false representation was a substantial factor in causing the owner to deliver the property to another, this element will be satisfied, even though other inducements may also have been involved.

### **Element 3 - Intent to defraud**

The third element is that the defendant intended to defraud *<insert name of person>*. In other words, (he/she) must have intended to deceive, and by this deceit, to obtain the property. *<See Intent to Defraud, Instruction 2.3-6.>*

The defendant must have fully realized and known that the (representation that (he/she) made / token or device (he/she) used) was untrue. No matter how careless a person may have been in failing to check the accuracy of (his/her) statements, negligence does not constitute a fraudulent intention. In addition, the pretense or representation must be actually false. Even if a person believes that (he/she) is lying, if the (statement / token / device) were not actually false, there would be no deception.

### **Element 4 - Value of the property<sup>1</sup>**

The fourth element is that the property had a value that *<insert as appropriate:>*

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant wrongfully obtained the property of another, 2) (he/she) obtained the property by (false pretenses / a false token or device), 3) (he/she) knew that the (pretenses were false / token or device was false), and 4) the value of the property obtained was *<insert value according to degree charged>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by obtaining property by false pretenses, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If the victim is over the age of sixty years, blind or physically disabled, it is second degree larceny regardless of the value of the property. General Statutes § 53a-123 (a) (5). See Larceny of an Elderly, Blind, or Physically Disabled Person, Instruction 9.1-9.

### ***Commentary***

To be found guilty of larceny by false pretenses, a person "must knowingly make a false representation with the intent to defraud, and that false representation must induce action that effectively causes the accused to receive something of value without compensation." *State v. Rochette*, 25 Conn. App. 298, 306, cert. denied, 220 Conn. 912 (1991), cert. denied, 502 U.S. 1045, 112 S.Ct. 905, 116 L.Ed.2d 806 (1992); see also *State v. Carcare*, 75 Conn. App. 756, 775-78 (2003) (obtaining property by the use of a stolen credit card).

## **9.1-8 Larceny by Obtaining Property by False Promise -- § 53a-119 (3) and §§ 53a-122 through 53a-125b**

Revised to April 23, 2010 (modified May 10, 2012)

**Note: The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.**

The defendant is charged [in count \_\_\_] with larceny by obtaining property by false promise in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person obtains property by false promise when, pursuant to a scheme to defraud, (he/she) obtains property of another by means of a representation, express or implied, that (he/she) or a third person will in the future engage in particular conduct, and when (he/she) does not intend to engage in such conduct or does not believe that the third person intends to engage in such conduct.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Obtained property of another**

The first element is that the defendant obtained property from the property owner.

"Obtaining" property includes, but is not limited to, bringing about the transfer of a legal interest in the property from the owner to the defendant or to a third person. If the legal title or ownership of the property or some legal interest in the property is transferred, such a transfer would constitute "obtaining" under the statute. The property does not need to be physically obtained. If the owner delivered the property intending to transfer legal ownership or some legal interest in the property, sufficient transfer would have occurred.

"Property" includes any (money / personal property / real property / thing in action / evidence of debt or contract / article of value of any kind). [Commodities of a public utility, such as gas, electricity, steam and water also constitute property.]

"Owner" means not only the true or lawful owner, but any person who has a superior right to that of the offender.

### **Element 2 - By false promise**

The second element is that the defendant made a representation that (he/she) or some other person would in the future engage in particular conduct. Not every prediction or statement about the future will qualify as a promise under this definition. It must pertain to something to

be done in the future by the defendant or some other person. For example, a prediction that it will be a nice day tomorrow would not be a promise under the statute. However, a statement that the defendant or some third person will pay money or confer some other benefit upon another person in return for some transfer of property would be a promise under this definition.

The representation or promise may be made in writing, verbally, or by actions or conduct. It may be express, as where the words used contain all the terms of the promise. It may also be implied, as where a person in a restaurant is served food on the assumption that (he/she) will pay the bill, even though nothing is said specifically about payment at the time the order is taken.

### **Element 3 - Intent to defraud**

The third element is that the defendant intended to defraud *<insert name of person>*. In other words, (he/she) must have intended to deceive, and by this deceit, to obtain the property. *<See Intent to Defraud, Instruction 2.3-6.>*

It is essential that the defendant had no honest intention of doing what (he/she) had promised [or no honest belief that the third person intended to keep the promise]. A reckless or foolish promise is not criminal unless there is no honest intention to keep it at the time the property is obtained. The fact that the promise was not carried out is not by itself sufficient evidence for you to determine that the defendant did not have the intention or belief that the promise would be carried out.

### **Element 4 - Value of the property<sup>1</sup>**

The fourth element is that the property had a value that *<insert as appropriate:>*

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant wrongfully obtained the property of another, 2) (he/she) obtained the property by a false promise, 3) (he/she) intended to defraud the owner of the property, and 4) the value of the property obtained was *<insert value according to degree charged>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by obtaining property by false promise, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If the victim is over the age of sixty years, blind or physically disabled, it is second degree larceny regardless of the value of the property. General Statutes § 53a-123 (a) (5). See Larceny of an Elderly, Blind, or Physically Disabled Person, Instruction 9.1-9.

## 9.1-9 Larceny of an Elderly, Blind, or Physically Disabled Person -- § 53a-119 (1), (2) and (3) and § 53a-123 (a) (5)

Revised to December 7, 2007

**Note:** If the victim of larceny by embezzlement, larceny by obtaining property by false pretenses, or larceny by obtaining property by false promise is over sixty years of age, blind or physically disabled, the offense is defined as second degree larceny in § 53a-123 (a) (5) regardless of the nature or value of the property.

The defendant is charged [in count \_\_\_] with larceny (by embezzlement / by obtaining property by false pretenses / by obtaining property by false promise) in the second degree against a person who is (sixty years of age or older / blind / physically disabled). The statute defining this offense reads in pertinent part as follows:

A person is guilty of larceny in the second degree when (he/she) commits larceny and the property, regardless of its nature or value, is obtained by (embezzlement / false pretenses / false promise) and the complainant is (sixty years of age or older / blind / physically disabled).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Committed larceny

The first element is that the defendant committed larceny (by embezzlement / by obtaining property by false pretenses / by obtaining property by false promise) in the second degree.

*<Insert elements from the instruction for the underlying crime:>*

- § 53a-119 (1): Larceny by Embezzlement, Instruction 9.1-6.
- § 53a-119 (2): Larceny by Obtaining Property by False Pretenses, Instruction 9.1-7.
- § 53a-119 (3): Larceny by Obtaining Property by False Promise, Instruction 9.1-8.

### Element 2 - Status of complainant<sup>1</sup>

The second element is that *<insert name of complainant>* was at the time *<insert as appropriate:>*

- at least sixty years of age.
- blind. For purposes of this offense a person is blind if (his/her) central visual acuity does not exceed 20/ 200 in the better eye with correcting lenses, or if (his/her) visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.  
*<Insert any medical evidence.>*
- physically disabled. For purposes of this offense, a person is physically disabled if (he/she) has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic process or changes or from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant *<insert the concluding summary from the instruction for the underlying crime>*, and that *<insert name of complainant>* was (at least 60 years of age / blind / physically disabled).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The definitions of "blind" and "physically disabled" are from General Statutes § 1-1f, which is specifically referenced in § 53a-123 (a) (5).

## **9.1-10 Larceny by Acquiring Property Lost, Mislaid or Delivered by Mistake -- § 53a-119 (4) and §§ 53a-122 through 53a-125b**

Revised to April 23, 2010 (modified May 10, 2012)

**Note: The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.**

The defendant is charged [in count \_\_\_] with larceny by acquiring property lost, mislaid, or delivered by mistake in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person who comes into control of property of another that (he/she) knows to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of larceny if, with purpose to deprive the owner thereof, (he/she) fails to take reasonable measures to restore the property to a person entitled to it.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Acquired property of another**

The first element is that the defendant came into control of the property of another. This means that the defendant took possession of the property or put the property in some place where it would be subject to (his/her) will. It means asserting some dominion or authority over the property by some action, such as moving it to some other location, concealing it, or using it. Some overt act of control is essential.

### **Element 2 - Knowledge**

The second element is that the defendant knew that the property had been lost, mislaid or delivered by mistake. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3*.

### **Element 3 - Failed to take measures to restore property**

The third element is that the defendant did not take reasonable measures to restore the property to the owner. What measures are reasonable depends upon the circumstances -- the opportunity to return the property, the identifiability of the owner, the lapse of time, and any other factor bearing on reasonableness. A person is not required, however, to incur any substantial expense in order to return property to the owner.

It is specifically provided by another statute that a person who finds and takes possession of any property of more than \$1.00 in value must report to the police within forty-eight hours that (he/she) has found such property.<sup>1</sup> Therefore, if you find that the defendant failed to report the finding of such property to the police within such time, you may, but are not required to, find that this was unreasonable.

#### **Element 4 - Intent**

The fourth element is that the defendant intended to deprive the owner of the property. To intend to "deprive" another of property means to intend to withhold or keep or cause it to be withheld from another permanently, or for so long a period or under such circumstances that the major portion of its value is lost to that person. In other words, the state must prove beyond a reasonable doubt that the defendant took control of the property for the purpose of keeping or using it permanently or virtually permanently, or of disposing of the property in such a way that there was a permanent or virtually permanent loss of the property to the owner.

A person might take control of property that (he/she) knows is lost, mislaid, or delivered by mistake, but would not be guilty of larceny if (he/she) had the intent to restore it to the owner. An intention to use property temporarily would not be an intent to deprive the owner of the property, unless such use involved the loss of a major portion of the value of the property to the owner. An intention to dispose of the property so as to render it unlikely that the owner will recover it would include such actions as a sale or transfer to another person, concealment, or alteration of the property, if such a disposition would render it unlikely that the property would be recovered.

#### **Element 5 - Value**

The fifth element is that the property had a value that *<insert as appropriate:>*

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant came into control of property, 2) (he/she) knew that the property was lost, mislaid, or delivered by mistake, 3) (he/she) did not take reasonable measures to restore the property to the owner, 4) (he/she) intended to permanently deprive the owner of the property, and 5) the value of the property obtained was *<insert value according to degree charged>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by acquiring property lost, mislaid or delivered by mistake, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to

prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 50-10.

## 9.1-11 Larceny by Extortion -- § 53a-119 (5) and § 53a-122 (a) (1)

Revised to December 1, 2007

**Note: Larceny by extortion is defined as first degree larceny in § 53a-122 (a) (1) regardless of the nature or value of the property.**

The defendant is charged [in count \_\_\_] with larceny by extortion in the first degree. The statute defining this offense reads in pertinent part as follows:

a person obtains property by extortion when (he/she) compels or induces another person to deliver such property to (himself/herself) or a third person by means of instilling in (him/her) a fear that, if the property is not so delivered, the actor or another will <insert appropriate subsection:>

- § 53a-119 (5) (A): cause physical injury to some person in the future.
- § 53a-119 (5) (B): cause damage to property.
- § 53a-119 (5) (C): engage in other conduct constituting a crime.
- § 53a-119 (5) (D): accuse some person of a crime or cause criminal charges to be instituted against (him/her).
- § 53a-119 (5) (E): expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule.
- § 53a-119 (5) (F): cause a strike, boycott or other collective labor group action injurious to some person's business.<sup>1</sup>
- § 53a-119 (5) (G): testify or provide information or withhold testimony or information with respect to another's legal claim or defense.
- § 53a-119 (5) (H): use or abuse (his/her) position as a public servant by performing some act within or related to (his/her) official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.
- § 53a-119 (5) (I): inflict any harm that would not benefit the defendant.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Obtained property of another**

The first element is that the defendant obtained the property of another.

"Obtaining" property includes, but is not limited to, bringing about the transfer of a legal interest in the property from the owner to the defendant or to a third person. If the legal title or ownership of the property or some legal interest in the property is transferred, such a transfer would constitute "obtaining" under the statute. The property does not need to be physically obtained. If the owner delivered the property intending to transfer legal ownership or some legal interest in the property, sufficient transfer would have occurred.

"Property" includes any (money / personal property / real property / thing in action / evidence of debt or contract / article of value of any kind). [Commodities of a public utility, such as gas, electricity, steam and water also constitute property.]

"Owner" means not only the true or lawful owner, but any person who has a superior right to that of the defendant.

### **Element 2 - By extortion**

The second element is that the defendant compelled or induced the person to deliver the property or service by instilling fear. Extortion means that the defendant instilled in *<insert name of person>* a fear that if the property was not turned over, the defendant or another person would *<insert as appropriate:>*

- **§ 53a-119 (5) (A):** cause physical injury to some person in the future. "Physical injury" means impairment of physical condition or pain. It is a reduced ability to act as one would otherwise have acted. The law does not require that the injury be serious. It may be minor.
- **§ 53a-119 (5) (B):** cause damage to property.
- **§ 53a-119 (5) (C):** engage in other conduct constituting a crime.
- **§ 53a-119 (5) (D):** accuse some person of a crime or cause criminal charges to be instituted against (him/her).
- **§ 53a-119 (5) (E):** expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule.
- **§ 53a-119 (5) (F):** cause a strike, boycott or other collective labor group action injurious to some person's business.
- **§ 53a-119 (5) (G):** testify or provide information or withhold testimony or information with respect to another's legal claim or defense.
- **§ 53a-119 (5) (H):** use or abuse (his/her) position as a public servant by performing some act within or related to (his/her) official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.
- **§ 53a-119 (5) (I):** inflict any harm that would not benefit the defendant.

The state alleges that the defendant *<describe the alleged acts of extortion.>* The state must prove that the threat or the act of extortion compelled or induced the person to turn over the property.

### **Element 3 - Larcenous Intent**

The third element is that at the time the defendant obtained the property, (he/she) intended to *<insert as appropriate:>*

- deprive the owner of (his/her) property.
- appropriate the property to (himself / herself) or a third person.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) obtained property from *<insert name of person>*, 2) (he/she) did so by *<describe alleged acts of extortion>*, and 3) (he/she) intended to (permanently deprive the owner of (his/her) property / permanently appropriate the property to (himself / herself) or a third person).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny in the first degree by extortion, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> This subsection includes the following exception: "except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act."

## 9.1-12 Larceny by Defrauding a Public Community -- § 53a-119 (6) (A) and (B) and §§ 53a-122 through 53a-123

Revised to December 1, 2007

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree: exceeds \$2,000) and § 53a-123 (second degree: does not exceed \$2,000).

The defendant is charged [in count \_\_\_] with larceny by defrauding a public community in the (first / second) degree. The statute defining this offense reads in pertinent part as follows:  
a person is guilty of defrauding a public community who *<insert appropriate subsection:>*

- § 53a-119 (6) (A): (authorizes / certifies / attests / files) a claim for benefits or reimbursement from a local, state or federal agency which (he/she) knows is false.
- § 53a-119 (6) (B): knowingly accepts the benefits from a local, state or federal agency from a claim (he/she) knows is false.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Claim for benefits<sup>1</sup>**

The first element is that the defendant *<insert as appropriate:>*

- (authorized / certified / attested / filed) a claim for benefits or reimbursement from a local, state or federal agency.
- knowingly accepted the benefits of a claim from a local, state or federal agency.

*<Describe specific allegations.>*

### **Element 2 - Knowledge of falsity of claim**

The second element is the defendant knew that the claim for benefits was false. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. *<See Knowledge, Instruction 2.3-3.>*

### **Element 3 - Larcenous intent**

The third element is that the defendant intended to deprive the public community of the value of the claim. To intend to "deprive" another of property means to intend to withhold or keep or cause it to be withheld from another permanently, or for so long a period or under such circumstances that the major portion of its value is lost to that person. In other words, the state must prove beyond a reasonable doubt that the defendant took the property for the purpose of keeping or using it permanently or virtually permanently, or of disposing of the property in such a way that there was a permanent or virtually permanent loss of the property to the owner.

### **Element 4 - Value of property**

The fourth element is that the value of the claim *<insert as appropriate:>*

**First degree:** exceeded \$2,000.

**Second degree:** was less than \$2,000.

<See *Larceny, Instruction 9.1-1*, for a full explanation of this element.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) <insert specific allegations regarding the claim for benefits>, 2) the defendant knew the claim was false, 3) (he/she) intended to permanently deprive the agency of the value of the claim, and 4) the value of the claim (exceeded / did not exceed) \$2,000.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by defrauding a public community in the (first / second) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statute § 53a-119 (6) provides that a fraudulent claim shall be deemed to be property.

### ***Commentary***

Actual prejudice to the agency is not required. *State v. Waterman*, 7 Conn. App. 326, 338, cert. denied, 200 Conn. 807 (1986) ("the gravamen of the offense . . . is the presentation of, or the aiding in the procuring or allowance of, a fraudulent claim").

## 9.1-13 Larceny by Defrauding a Public Community -- § 53a-119 (6) (C) and §§ 53a-122 through 53a-123

Revised to December 1, 2007

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree: exceeds \$2,000) and § 53a-123 (second degree: does not exceed \$2,000).

The defendant is charged [in count \_\_\_] with larceny by defrauding a public community in the (first / second) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of defrauding a public community who, as an officer or agent of any public community, with intent to prejudice it, appropriates its property to the use of any person or draws any order upon its treasury or presents or aids in procuring or allowing<sup>1</sup> any fraudulent claim against such community.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Officer or agent**

The first element is that the defendant was an (officer / agent) of a public community. A "public community" means a governmental entity as distinguished from a private one. A city, town, or the state or federal government, or any agency or subdivision of these governmental bodies, would constitute "a public community" under the statute. In this case the alleged public community is *<insert name of public community>*.

*<Insert appropriate definition:>*

- An "agent" is one who acts in place of another who has given (him/her) such authority. The word includes anyone employed to assist a town in the performance of any of its public duties. A state employee is considered an agent.
- An "officer" of a public community is a person holding an office that has its source in the sovereign authority speaking through the constitution or legislation and who by virtue of (his/her) incumbency becomes invested with some portion of the sovereign power which (he/she) is to exercise for the benefit of the public.<sup>2</sup>

*<Describe the alleged status of the defendant as an agent or officer.>*

### **Element 2 - Obtained property<sup>3</sup>**

The second element is that the defendant *<insert as appropriate:>*

- appropriated the property of the public community to the use of any person. To "appropriate" means either to exercise control over the property, or to aid a third person to exercise control over it, permanently, or for so long a period or under such circumstances as to acquire the major portion of its economic value or benefit, or to dispose of the property for the benefit of oneself or a third person.
- drew an order upon its treasury. To "draw an order" means to write a check.

- (presented / aided in procuring / allowed) any fraudulent claim against the public community. A fraudulent claim is one that is false and made for the purpose of deceiving. If the defendant, knowing the claim was fraudulent, made the false statements claimed, and if these statements helped in bringing about the payment of the claim, then the defendant would have thus aided in the procurement of a fraudulent claim.

### **Element 3 - Intent**

The third element is that the defendant specifically intended to prejudice the community.<sup>4</sup> In other words, (he/she) must have intended that the community be harmed or suffer some loss in the transaction. Poor judgment in carrying out (his/her) duties is not enough. The state must prove that at the time of (his/her) actions, (he/she) fully realized that what (he/she) was doing was harmful or detrimental to the community.

### **Element 4 - Value of property**

The fourth element is that the value of the claim <insert as appropriate:>

**First degree:** exceeded \$2,000.

**Second degree:** was less than \$2,000.

<See *Larceny, Instruction 9.1-1*, for a full explanation of this element.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) was an (officer / agent) of a public community, 2) (he/she) <insert specific allegations of fraudulent act>, 3) (he/she) intended to prejudice the public community, and 4) the value of the (property / order / claim) (exceeded / did not exceed) \$2,000.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by defrauding a public community, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The last part of this statute in the book of General Statutes printed by the Legislative Commissioner's Office reads "aids in procuring to be allowed any fraudulent claim." It probably should read as paraphrased here. The court may want to discuss this with the attorneys.

<sup>2</sup> *State ex rel. Neal v. Brethauer*, 83 Conn. 143, 146 (1910).

<sup>3</sup> General Statutes § 53a-119 (6) provides that an order against the treasury of a public community or a claim for benefits from a public community shall be deemed to be property.

<sup>4</sup> Actual prejudice to the agency is not required. *State v. Waterman*, 7 Conn. App. 326, 338, cert. denied, 200 Conn. 807 (1986) ("the gravamen of the offense . . . is the presentation of, or the aiding in the procuring or allowance of, a fraudulent claim").

## 9.1-14 Larceny by Theft of Services -- § 53a-119 (7) and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

**This offense is very broad. Include only those portions of the statute that are relevant and tailor the instruction to the factual allegations.**

The defendant is charged [in count \_\_\_] with larceny by the theft of services in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of theft of services when *<insert appropriate subsection:>*

- **§ 53a-119 (7) (A):** with intent to avoid payment for restaurant services rendered, or for services rendered to (him/her) as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, (he/she) avoids such payment by unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which (he/she) knows to be false.
- **§ 53a-119 (7) (B) (i):** with intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor or to avoid payment of the lawful charge for such transportation service which has been rendered to (him/her), (he/she) obtains such service or avoids payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay.
- **§ 53a-119 (7) (B) (ii):** with intent to obtain the use of equipment, including a motor vehicle, without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such use which has been permitted, (he/she) obtains such use or avoids such payment therefor by means of any false or fraudulent representation, fraudulent concealment, false pretense or personation, trick, artifice or device, including, but not limited to, a false representation as to (his/her) name, residence, employment, or driver's license.
- **§ 53a-119 (7) (C):** obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that (he/she) is not entitled to the use thereof, and with intent to derive a commercial or other substantial benefit for (himself/herself) or a third person, (he/she) uses or diverts to the use of (himself/herself) or a third person such labor, equipment or facilities.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

**Element 1 - Avoids payment, obtains services, diverts use**

The first element is that the defendant *<insert specific allegations as to type of services stolen>*.

**Element 2 - Means**

The second element is that the defendant *<insert specific allegations as to the means, e.g., stealth, misrepresentation of fact>*.

**Element 3 - Intent**

The third element is that the defendant specifically intended to (avoid payment for / derive a commercial or other benefit from) the services. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

**Element 4 - Value**

The fourth element is that the property had a value that *<insert as appropriate:>*

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that *<summarize allegations as outlined above>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by theft of services, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary***

See generally *State v. Marsala*, 59 Conn. App. 135, 138-41, cert. denied, 254 Conn. 948 (2000) (bailor of car unlawfully deprived repair shop of its superior right to possession to the extent of its lien and therefore had wrongfully taken the car).

## 9.1-15 Larceny by Receiving Stolen Property -- § 53a-119 (8) and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

The defendant is charged [in count \_\_\_] with larceny by receiving stolen property in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of larceny by receiving stolen property if (he/she) (receives / retains / disposes of) stolen property knowing that it has probably been stolen or believing that it has probably been stolen.<sup>1</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Stolen property**

The first element is that the defendant (received / retained / disposed of) stolen property.

"Stolen property" is property that has been wrongfully taken away from the person who owns or possesses it with the intent of depriving that person of it. It does not matter who stole the property or through how many hands it passed. All you need to determine is that it was stolen property. <Insert appropriate definition(s):>

- To "receive" means to acquire possession, control or title, or to lend on the security of the property. Physical possession is not essential. It is sufficient if the defendant has control over the property, such as keeping it in (his/her) house or car. It is also sufficient if the defendant has received the property as security on a loan, as in the case of a pawnbroker who lends money in such a situation.
- To "retain" means to keep or hold property. If a person initially received stolen property innocently, (he/she) would be guilty if (he/she) learned later that the property had been stolen and continued to retain it.
- To "dispose of" means to transfer or relinquish possession or control over the property or to effect a virtually permanent or final change in its nature so as to make restoration to the owner impracticable. A sale or pledge of the goods would be a disposition; so would a use of the goods that consumed the greater portion of their economic value.

[<If appropriate:> A person who accepts or receives the use or benefit of a public utility commodity that customarily passes through a meter, knowing such commodity (has been diverted from the meter / has not been correctly registered by the meter / has not been registered at all by a meter), is guilty of larceny by receiving stolen property.]

### **Element 2 - Knowledge**

The second element is that the defendant knew or believed that the property had probably been stolen. (He/She) need not have known with certainty that it was stolen property. If (he/she) knew or believed that more probably than not it had been stolen, that would be sufficient.<sup>2</sup>

It would not be enough for you to conclude that the defendant exercised poor judgment when (he/she) acquired the property or that (he/she) was careless and should have suspected that the property was stolen. There must have been an actual belief in the defendant's mind that the property was, or probably was, stolen.

This belief need not have been present at the time the defendant first acquired the goods. If (he/she) subsequently discovered they had been stolen, (his/her) continued retention of them or (his/her) ultimate disposition of them while having such knowledge would constitute the crime.

### **Element 3 - Value**

The third element is that the property had a value that *<insert as appropriate:>*

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (received / retained / disposed of) stolen property, 2) (he/she) knew or believed that the property had probably been stolen, and 3) the value of the stolen property was *<insert value according to degree charged>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by receiving stolen property, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The statute concludes with "unless the property is received, retained, disposed of with purpose to restore it to the owner." This portion of the statute should not be included unless the defense has introduced evidence that he or she received the property with the purpose of restoring it to its owner. It is then the state's burden to disprove it. "Whether the defendant received, retained or disposed of the property with the purpose of restoring it to the owner is peculiarly within his personal knowledge. We conclude that [this part] of the statute is not an essential element of [larceny by receiving stolen property.]" *State v. Foster*, 45 Conn. App. 369, 378, cert. denied, 243 Conn. 904 (1997).

<sup>2</sup> See generally *State v. Nunes*, 58 Conn. App. 296, 300-302, cert. denied, 254 Conn. 944 (2000).

### ***Commentary***

See generally *State v. Desimone*, 241 Conn. 439, 452- 58 (1997) (on aggregation); *State v. Foster*, supra, 45 Conn. App. 375-77 (on knowledge).

This subsection of the larceny statute differs from the others in that specific intent is not an element. *State v. Perez*, 181 Conn. 299, 315 (1980); *State v. Foster*, 45 Conn. App. 369, 378, cert. denied, 243 Conn. 904 (1997). Because intent to deprive the owner is not an element, it does not matter whether the person from whom the defendant received the property was its owner. It is the facts surrounding the defendant's receipt of the property from which the jury infers guilty knowledge. See *State v. Gabriel*, 192 Conn. 405, 409-17 (1984) (discussing guilty knowledge).

Larceny by receiving stolen property of a motor vehicle and using a motor vehicle without the owner's permission, § 53a-119b, are separate offenses. *State v. Foster*, supra, 45 Conn. App. 383-87.

"[P]ossession of recently stolen property raises a permissible inference of criminal connection with the property, and if no explanation is forthcoming, the inference of criminal connection may be as a principal in the theft, or as a receiver under the receiving statute, depending upon the other facts and circumstances which may be proven." (Internal quotation marks omitted.) *State v. Rivera*, 39 Conn. App. 96, 104, cert. denied, 235 Conn. 921 (1995).

## 9.1-16 Larceny by Shoplifting -- § 53a-119 (9) and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

The defendant is charged [in count \_\_\_] with shoplifting in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of shoplifting who intentionally takes possession of any goods, wares or merchandise offered or exposed for sale by any store or other mercantile establishment with the intention of converting the same to (his/her) own use, without paying the purchase price thereof.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Possession**

The first element is that the defendant took possession of the property of another. If (he/she) had them in (his/her) hands or on (his/her) person, that would be taking possession of them. It would also be taking possession of them if (he/she) placed them in some place or upon some other person where they would be subject to (his/her) control.

### **Element 2 - Goods, wares or merchandise**

The second element is that the property was either goods, wares or merchandise offered or exposed for sale by a store or other mercantile establishment. The words "goods," "wares" and "merchandise" have their ordinary meanings and encompass all things that are bought and sold in the marketplace. Such goods, wares or merchandise must be offered or exposed for sale by a store or mercantile establishment.

### **Element 3 - Intent**

The third element is that the defendant specifically intended to convert them to (his/her) own use without paying the purchase price. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

"Converting to (his/her) own use" means the defendant must have intended to use the goods for (his/her) own purpose. "(His/Her) own use" would include selling, transferring, or giving the merchandise to another. The defendant must also have taken possession with the intention of evading payment of the purchase price. Such must have been (his/her) intention at the time (he/she) took possession. If the defendant honestly intended to pay for the goods at the time (he/she) took possession, but then forgot to do so before (he/she) left the store, (he/she) would not have had the intention of evading payment and would not be guilty. Carelessness, no matter

how great, is not enough for this crime. The defendant must have had the dishonest intention of evading payment.

[<If appropriate:> The statute defining the offense of shoplifting provides that certain evidence, if believed, may be sufficient to establish intent. If you find that the defendant intentionally concealed unpurchased goods or merchandise, either on the premises or outside the premises of the store, you may then find, but are not required to, that (he/she) concealed the article with the intention of converting the same to (his/her) own use without paying the purchase price thereof. To "conceal" means to hide, and it would include any actions that would render it more difficult to discover or identify the goods. The statute requires an intentional concealment, which means some act intended to prevent detection or discovery of the goods.]

#### **Element 4 - Value**

The fourth element is that the property had a value that <insert as appropriate:>

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

<See Larceny, Instruction 9.1-1, for a full explanation of this element.>

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant took possession of the property of another, 2) the property consisted of goods, wares or merchandise offered for sale by a store or other mercantile establishment, 3) the defendant specifically intended to convert them to (his/her) own use without paying the purchase price, and 4) the property had a value of <insert value according to degree charged>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of shoplifting, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.1-17 Possession of a Shoplifting Device -- § 53a-127f

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with possession of a shoplifting device. The statute defining this offense reads in pertinent part as follows:

a person is guilty of possession of a shoplifting device when such person has in such person's possession any device, instrument or other thing specifically designed or adapted to advance or facilitate the offense of larceny by shoplifting by defeating any antitheft or inventory control device, under circumstances manifesting an intent to use the same in the commission of larceny by shoplifting.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Possession**

The first element is that the defendant had in (his/her) possession any device, instrument or other thing specifically designed or adapted to advance or facilitate the offense of larceny by shoplifting by defeating any antitheft or inventory control device. <See *Possession, Instruction 2.11-1.*>

### **Element 2 - Intent**

The second element is that the circumstances of the defendant's possession of the device manifested an intent to use the device in the commission of shoplifting. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

A person is guilty of "shoplifting" when (he/she) intentionally takes possession of any goods, wares or merchandise offered or exposed for sale by any store or other mercantile establishment with the intention of converting the same to (his/her) own use, without paying the purchase price. <See *Larceny by Shoplifting, Instruction 9.1-16.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) possessed a shoplifting device, and 2) the circumstances were such that it can be inferred that (he/she) intended to use the device in the commission of larceny by shoplifting.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of possession of a shoplifting device, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.1-18 Larceny by Conversion of a Motor Vehicle -- § 53a-119 (10) and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

The defendant is charged [in count \_\_\_] with larceny by conversion of a motor vehicle in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of conversion of a motor vehicle who, after renting or leasing a motor vehicle under an agreement in writing which provides for the return of such vehicle to a particular place at a particular time, fails to return the vehicle to such place within the time specified, and who thereafter fails to return such vehicle to the agreed place or to any other place of business of the lessor within one hundred twenty hours after the lessor shall have sent a written demand to (him/her) for the return of the vehicle by registered mail addressed to (him/her) at (his/her) address as shown in the written agreement or, in the absence of such address, to (his/her) last-known address as recorded in the records of the motor vehicle department of the state in which (he/she) is licensed to operate a motor vehicle.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Rented or leased a motor vehicle**

The first element is that the defendant (rented / leased) a motor vehicle. *<Review the evidence of the written lease and re-read or paraphrase the statutory language regarding same.>*

### **Element 2 - Failed to return the motor vehicle**

The second element is that the defendant failed to return the motor vehicle at the agreed upon time and within 120 hours after *<insert name of lessor>* sent a written demand for the return of the vehicle. *<Review the evidence of the demand letter.>*

### **Element 3 - Intent**

The third element is that the defendant intended to convert the vehicle to (his/her) own use. "Conversion" is an unauthorized assumption and exercise of the right of ownership over goods belonging to another, to the exclusion of the owner's rights. Even when a person's possession of the property was at first rightful, retention of that property can become an unlawful conversion. "(His/Her) own use" would include selling, transferring or giving the property to another.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

**Element 4 - Value**

The fourth element is that the motor vehicle had a value that *<insert as appropriate:>*

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (rented / leased) a motor vehicle, 2) (he/she) failed to return the vehicle, 3) (he/she) intended to convert the vehicle to (his/her) own use, and 4) the value of the motor vehicle was *<insert value according to degree charged>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by conversion of a motor vehicle, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

# 9.1-19 Larceny by Obtaining Property Through Fraudulent Use of An Automated Teller Machine -- § 53a-119 (11) and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

The defendant is charged [in count \_\_\_] with larceny through the fraudulent use of an automated teller machine in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person obtains property through fraudulent use of an automated teller machine when (he/she) obtains property by knowingly using in a fraudulent manner an automated teller machine with intent to deprive another of property or to appropriate the same to (himself/herself) or a third person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

## **Element 1 - Obtained property**

The first element is that the defendant wrongfully obtained the property of another person.

## **Element 2 - Fraudulent use of an ATM**

The second element is that the defendant knowingly obtained the property through the fraudulent use of an automated teller machine. "Automated teller machine" means an unmanned device at which banking transactions including, without limitation, deposits, withdrawals, advances, payments and transfers may be conducted, and includes, without limitation, a satellite device and point of sale terminal.<sup>1</sup> <See *Intent to Defraud, Instruction 2.3-6.*>

## **Element 2 - Larcenous intent**

The second element is that at the time the defendant (took / obtained / withheld) the property, (he/she) intended to <insert as appropriate:>

- permanently deprive the owner of the public record.
- permanently appropriate the public record to (himself/herself) or a third person.

<See *Larceny, Instruction 9.1-1, for a full explanation of this element.*>

## **Element 4 - Value**

The fourth element is that the property had a value that <insert as appropriate:>

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

- Third degree:** exceeded \$2,000.  
**Fourth degree:** exceeded \$1,000.  
**Fifth degree:** exceeded \$500.  
**Sixth degree:** did not exceed \$500.

<See *Larceny, Instruction 9.1-1*, for a full explanation of this element.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant obtained the property of another person, 2) (he/she) did so through the fraudulent use of an automated teller machine, 3) (he/she) intended to (permanently deprive the owner of (his/her) property / permanently appropriate the property to (himself / herself) or a third person), and 4) the property had a value of <insert value according to degree charged>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by obtaining property through fraudulent use of an automated teller machine, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> "Point of sale terminal" is defined in § 36-193a.

### ***Commentary***

"In any prosecution for larceny based upon fraudulent use of an automated teller machine, the crime shall be deemed to have been committed in the town in which the machine was located. In any prosecution for larceny based upon more than one instance of fraudulent use of an automated teller machine, (A) all such instances in any six-month period may be combined and charged as one offense, with the value of all property obtained thereby being accumulated, and (B) the crime shall be deemed to have been committed in any of the towns in which a machine that was fraudulently used was located." General Statutes § 53a-119 (11).

## 9.1-20 Larceny by Library Theft -- § 53a-119 (12) and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

The defendant is charged [in count \_\_\_] with larceny by library theft in the (first / second / third / fourth / fifth / sixth) degree. Larceny simply means theft or stealing. The statute defining this offense reads in pertinent part as follows:

a person is guilty of library theft when (he/she) *<insert appropriate subsection:>*

- § 53a-119 (12) (A): conceals on (his/her) person or among (his/her) belongings a book or other archival library materials, belonging to, or deposited in, a library facility with the intention of removing the same from the library facility without authority.
- § 53a-119 (12) (A): without authority removes a book or other archival library materials from a library facility.
- § 53a-119 (12) (B): mutilates a book or other archival library materials belonging to, or deposited in, a library facility, so as to render it unusable or reduce its value.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Concealed, removed, mutilated library materials**

The first element is that the defendant (concealed with intent to remove / removed / mutilated) a book or other archival library materials.

The statute defines the term "book or other archival library materials" to include any book, plate, picture, photograph, engraving, painting, drawing, map, manuscript, document, letter, public record, microform, sound recording, audiovisual material in any format, magnetic or other tape, electronic data-processing record, artifact or other documentary, written or printed material regardless of physical form or characteristics, or any part thereof, belonging to, on loan to, or otherwise in the custody of a library facility.

"Library facility" means any public library, any library of an educational institution, organization or society, any museum, any repository of public records and any archives.

*<Insert appropriate definition:>*

- To "conceal" means to hide, and it would include any actions that would render it more difficult to discover or identify the book.
- To "mutilate" is to render a book imperfect by any physical act short of the total destruction of the book. Such mutilation must render the book unusable or reduce its value.

**Element 2 - Larcenous Intent**

The second element is that at the time the defendant (took / obtained / withheld) the property, (he/she) intended to *<insert as appropriate:>*

- permanently deprive the owner of the public record.
- permanently appropriate the public record to (himself/herself) or a third person.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

**Element 3 - Value<sup>1</sup>**

The third element is that the property had a value that *<insert as appropriate:>*

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (concealed with intent to remove / removed / mutilated) a book or other archival material from a library facility, 2) (he/she) did so intending to permanently deprive the library of its property, and 3) the value of the material was *<insert value according to degree charged>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by library theft, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If the defendant is charged with mutilating an item, the appropriate value would be the reduction in value as a result of the mutilation.

## 9.1-21 Larceny by Conversion of Leased Personal Property -- § 53a-119 (13) and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

The defendant is charged [in count \_\_\_] with larceny by conversion of leased personal property in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of conversion of leased personal property who, with the intent of converting the same to (his/her) own use or that of a third person, after renting or leasing such property under an agreement in writing which provides for the return of such property to a particular place at a particular time, (sells / conveys / conceals / aids in concealing) such property or any part thereof, and who thereafter fails to return such property to the agreed place or to any other place of business of the lessor within one hundred ninety-two hours after the lessor shall have sent a written demand to (him/her) for the return of the property by registered or certified mail addressed to (him/her) at (his/her) address as shown in the written agreement, unless a more recent address is known to the lessor.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Leased personal property**

The first element is that the defendant leased personal property. "To lease personal property" means to receive personal property pursuant to a written contract, by which one owning such property, the lessor, grants to another, the lessee, the right to possess, use and enjoy such personal property for a specified period of time for a specified sum.<sup>1</sup> *<Review the evidence of the written lease and re-read or paraphrase the statutory language regarding same.>*

### **Element 2 - Failed to return**

The second element is that the defendant failed to return the property at the agreed upon time and within 192 hours after *<insert name of lessor>* sent a written demand for the return of the property. *<Review the evidence of the demand letter.>*

### **Element 3 - Intent**

The third element is that the defendant intended to convert the property to (his/her) own use. "Conversion" means an unauthorized assumption and exercise of the right of ownership over goods belonging to another, to the exclusion of the owner's rights. Even when, as the state

alleges here, a person's possession of the property was at first rightful, retention of that property can become an unlawful conversion. "(His/Her) own use" would include selling, transferring or giving the property to another.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

[<*Insert if applicable:*> The statute defining the offense of the conversion of leased personal property provides that certain evidence, if believed, may be sufficient to establish intent. If you find that the defendant was in the possession of personal property, received upon a written lease, who, with intent to defraud, (sells / conveys / conceals / aids in concealing) the property or any part of it, you may then find, but are not required to, that (he/she) intended to convert the property to (his/her) own use. <See *Intent to Defraud, Instruction 2.3-6.*>]

[<*Insert if applicable:*> The statute defining the offense of the conversion of leased personal property provides that certain evidence, if believed, may be sufficient to establish intent. If you find that the defendant used a false or fictitious name or address in obtaining the leased personal property, you may then find, but are not required to, that (he/she) intended to convert the property to (his/her) own use.]

#### **Element 4 - Value**

The fourth element is that the property had a value that <*insert as appropriate:*>

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

<See *Larceny, Instruction 9.1-1, for a full explanation of this element.*>

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant leased personal property, 2) (he/she) failed to return the property, 3) (he/she) intended to convert the property to (his/her) own use, and 4) the value of the property was <*insert value according to degree charged*>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by conversion of leased personal property, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Defined in General Statutes § 53a-119 (13) (D).

## 9.1-22 Larceny by Failure to Pay Prevailing Rate of Wages -- § 53a-119 (14) and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

**This offense requires that the defendant has also committed a violation of § 53a-157a, False Statement in the First Degree. If that offense is charged in a separate count, the court may simply refer to that count for the first three elements, and instruct the jury that if they have found the defendant guilty on that count, then the first three elements of this offense have been met.**

The defendant is charged [in count \_\_\_] with larceny by failure to pay prevailing rate of wages in the (first / second / third / fourth / fifth / sixth) degree. Larceny simply means theft or stealing. The statute defining this offense reads in pertinent part as follows:

a person is guilty of failure to pay prevailing rate of wages when (he/she) (A) files a certified payroll,<sup>1</sup> which (he/she) knows is false, and (B) fails to pay to an employee or to an employee welfare fund the amount attested to in the certified payroll with the intent to convert such amount to (his/her) own use or to the use of a third party.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Contract for public works project**

The first element is that a contract existed between <insert name of contractor> and <insert name of agency or political subdivision> for <insert specific nature of contract>.

### **Element 2 - Made a false statement**

The second element is that the defendant knowingly made a false written statement on a certified payroll. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

### **Element 3 - Known to be false**

The third element is that that statement was not true and the defendant did not believe the statement to be true.

**Element 4 - Intent to mislead**

The fourth element is that the defendant made the statement with the specific intent to mislead a contracting authority or the labor commissioner in the exercise of (his/her) authority or the fulfillment of (his/her) duties.<sup>2</sup> A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

**Element 5 - Failed to pay according to certified payroll**

The fifth element is that the defendant failed to pay the amount attested to in the certified payroll to an employee or an employee welfare fund.

**Element 6 - Intent to convert**

The sixth element is that the defendant intended to convert the amount to (his/her) own use or to the use of a third party. "Conversion" means an unauthorized assumption and exercise of the right of ownership over property belonging to another, to the exclusion of the owner's rights. In this case, the property consists of the wages owed according to the certified payroll.

**Element 7 - Value**

The final element is that the converted wages had a value that <insert as appropriate:>

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

<See *Larceny, Instruction 9.1-1, for a full explanation of this element.*>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) there was a contract between <insert name of contractor> and <insert name of agency or political subdivision> for <insert specific nature of contract>, 2) the defendant intentionally made a false written statement on a certified payroll, 3) the defendant did not believe the statement was true, 4) the defendant made the statement with the specific intent to mislead a contracting authority or the labor commissioner in the exercise of (his/her) authority or the fulfillment of (his/her) duties, 5) the defendant did not pay the amount attested to in the certified payroll to an employee or an employee welfare fund, 6) the defendant intended to convert that amount to (his own use / her own use / the use of a third party), and 7) the value of the converted wages was <insert value according to the degree charged>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by failure to pay prevailing rate of wages, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> In accordance with § 31-53. Pursuant to § 31-53, every employer on a public works project shall submit weekly to the contracting agency a certified payroll indicating, among other things, that the rate of wages paid to each mechanic, laborer or workman and the amount of payment or contributions paid or payable on behalf of each such employee to any employee welfare fund, are not less than the prevailing rate of wages and the amount of payment or contributions paid or payable on behalf of each such employee to any employee welfare fund are not less than those required by the contract to be paid.

<sup>2</sup> The intent element is derived from § 53a-157a, False Statement in the First Degree, which is specifically cited in § 53a-119 (14). See False Statement in the First Degree, Instruction 4.2-1.

## 9.1-23 Larceny by Theft of Utility Service -- § 53a-119 (15) and §§ 53a-122 through 53a-125b

Revised to April 23, 2010 (modified May 10, 2012)

**Note:** The degree of the larceny is determined by the value of the property stolen. See § 53a-122 (first degree); § 53a-123 (second degree); § 53a-124 (third degree); § 53a-125 (fourth degree); § 53a-125a (fifth degree); § 53a-125b (sixth degree). The dollar amounts for the degrees of larceny were increased as of October 1, 2009. See the table in Introduction to Larceny for the values in effect prior to that date.

The defendant is charged [in count \_\_\_] with larceny by theft of utility service in the (first / second / third / fourth / fifth / sixth) degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of theft of utility service when (he/she) intentionally obtains (electric / gas / water / telecommunications / wireless radio communications / community antenna television service) that is available only for compensation  
<insert appropriate subsection.>

- **§ 53a-119 (15) (A):** by deception or threat or by false token, slug or other means including, but not limited to, electronic or mechanical device or unauthorized use of a confidential identification or authorization code or through fraudulent statements, to avoid payment for the service by (himself/herself) or another person.
- **§ 53a-119 (15) (B):** by tampering or making connection with or disconnecting the meter, pipe, cable, conduit, conductor, attachment or other equipment or by manufacturing, modifying, altering, programming, reprogramming or possessing any device, software or equipment or part or component thereof or by disguising the identity or identification numbers of any device or equipment utilized by a supplier of electric, gas, water, telecommunications, wireless radio communications or community antenna television service, without the consent of such supplier, in order to avoid payment for the service by (himself/herself) or another person.
- **§ 53a-119 (15) (C):** with intent to avoid payment by (himself/herself) or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical measuring device provided by the supplier of the service, by tampering with such meter or device or by attempting in any manner to prevent such meter or device from performing its measuring function, without the consent of the supplier of the service.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Obtained utility service**

The first element is that the defendant intentionally obtained (electric / gas / water / telecommunications / wireless radio communications / community antenna television service) that is available only for compensation. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

[<Insert if applicable:> The statute defining the offense of theft of utility service provides that certain evidence, if believed, may be sufficient to establish intent. If you find that <insert as appropriate:>

- any meter, pipe, cable, conduit, conductor, attachment or other equipment has been tampered with or connected or disconnected,
- any device, software or equipment or part or component thereof has been modified, altered, programmed, reprogrammed or possessed,
- the identity or identification numbers of any device or equipment utilized by the supplier of the service have been disguised,
- a meter or other mechanical measuring device provided by the supplier of the service has been tampered with or prevented from performing its measuring function,

without the consent of the supplier of the service, you may then find, but are not required to, that the person to whom the service is billed has the intent to obtain the service and to avoid making payment for the service.<sup>1]</sup>

### **Element 2 - Means**

The second element is that the defendant obtained such services by means of <insert specific allegations and reread the relevant portion of the statute>.

### **Element 3 - Larcenous Intent**

The third element is that at the time the defendant obtained the services, (he/she) intended to avoid payment for such services. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Element 4 - Value**

The fourth element is that the services allegedly stolen had a value that <insert as appropriate:>

**First degree:** exceeded \$20,000.

**Second degree:** exceeded \$10,000.

**Third degree:** exceeded \$2,000.

**Fourth degree:** exceeded \$1,000.

**Fifth degree:** exceeded \$500.

**Sixth degree:** did not exceed \$500.

<See Larceny, Instruction 9.1-1, for a full explanation of this element.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) intentionally obtained (electric / gas / water / telecommunications / wireless radio communications / community antenna television service) that is available only for compensation, 2) (he/she) did so by means of <insert specific allegations>, 3) (he/she) intended to avoid payment for the services, and 4) the value of the services was <insert value according to degree charged>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of larceny by theft of utility service, then you shall find the defendant guilty. On

the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The statute further provides that "[t]he presumption does not apply if the person to whose service the condition applies has received such service for less than thirty-one days or until the service supplier has made at least one meter or service reading and provided a billing statement to the person as to whose service the condition applies. The presumption does not apply with respect to wireless radio communications."

## 9.1-24 Fraudulent Use of an Automated Teller Machine -- § 53a-127b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with fraudulent use of an automated teller machine. The statute defining this offense reads in pertinent part as follows:

a person is guilty of fraudulent use of an automated teller machine when, with intent to *<insert as appropriate:>*

- deprive another of property,
  - appropriate property to (himself /herself) or a third person,
- such person knowingly uses in a fraudulent manner an automated teller machine for the purpose of obtaining property.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Used automated teller machine**

The first element is that the defendant used an automated teller machine, which is defined by statute as an unmanned device at which banking transactions including, without limitation, deposits, withdrawals, advances, payments and transfers may be conducted, and includes, without limitation, a satellite device and point of sale terminal. A "point of sale terminal" means a device located in a commercial establishment at which sales transactions can be charged directly to the buyer's deposit, loan or credit account, but at which deposit transactions cannot be conducted.<sup>1</sup>

### **Element 2 - Fraudulent manner**

The second element is that the defendant knowingly used the automated teller machine in a fraudulent manner. A "fraudulent manner" means a deliberately planned purpose and intent to cheat or deceive or unlawfully deprive someone of some advantage, benefit or property. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. *<See Knowledge, Instruction 2.3-3.>*

### **Element 3 - To obtain property**

The third element is that the defendant's use of the automated teller machine was for the purpose of obtaining property. "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another. "Property" means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind.

### **Element 4 - Intent**

The fourth element is that the defendant intended to *<insert as appropriate:>*

- permanently deprive the owner of the public record.
- permanently appropriate the public record to (himself/herself) or a third person.

*<See Larceny, Instruction 9.1-1, for a full explanation of this element.>*

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant used an automated teller machine, 2) (he/she) did so in a fraudulent manner, 3) it was for the purpose of obtaining property, and 4) (he/she) intended to (permanently deprive another of property / permanently appropriate the property to (himself/herself) or a third person).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of fraudulent use of an automated teller machine, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 36a-2 (48).

## 9.1-25 Theft of Utility Service -- § 53a-127c (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with theft of (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service for profit or economic gain. The statute defining this offense reads in pertinent part as follows:

a person is guilty of theft of (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service for profit or economic gain when (he/she) engages in the business for profit or economic gain of tampering or making connection with the equipment of a supplier of (a/an) (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service which is not metered or otherwise measured, in whole or in part, without the consent of such supplier, for the purpose of supplying such service on one or more occasions to two or more households.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Business for profit or economic gain**

The first element is that the defendant was engaged in a business for profit or economic gain.

### **Element 2 - Tampered with equipment**

The second element is that the defendant, as part of this business, (tampered / made connection) with the equipment of a supplier of (a/an) (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service which is not metered or otherwise measured. *<Identify supplier and type of service.>*

### **Element 3 - No consent**

The third element is that the defendant did not have the consent of the supplier.

### **Element 4 - Purpose**

The fourth element is that the defendant (tampered / made connection) with the equipment of *<identify supplier>* for the purpose of supplying *<identify service>* on one or more occasions to two or more households. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was engaged in a business for profit or economic gain, 2) as part of this business, (he/she) (tampered / made connection) with the equipment of a supplier of (a/an) (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service which is not metered or otherwise measured, 3) the supplier did not consent to the defendant's conduct, and 4) the defendant supplied *<identify service>* on one or more occasions to two or more household.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of theft of *<identify service>*, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.1-26 Theft of Utility Service -- § 53a-127c (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with theft of (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service for profit or economic gain. The statute defining this offense reads in pertinent part as follows:

a person is guilty of theft of (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service for profit or economic gain when (he/she) engages in the business for profit or economic gain of offering for sale to any person other than the supplier of (a/an) (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service which is not metered or otherwise measured, in whole or in part, any decoder, descrambler or other device, the principal function of which defeats the electronic signal encryption jamming or individually addressed switching imposed by such supplier for the purpose of restricting the delivery of such service to persons who pay for such service.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Business for profit or economic gain**

The first element is that the defendant was engaged in a business for profit or economic gain.

### **Element 2 - Offered for sale**

The second element is that the defendant, as part of this business, offered to sell items to any person other than the supplier of (a/an) (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service.

### **Element 3 - Devices**

The third element is that the items the defendant offered for sale were decoders, descramblers, or other devices the principal function of which is to defeat the electronic signal encryption jamming or individually addressed switching that the supplier installs in order to restrict the delivery of the service to persons who pay for the service. In other words, a device that allows a person to obtain services at no cost. *<Identify type of device alleged.>*

[*<Insert if applicable:>* The statute defining the offense of theft of utility service provides that certain evidence, if believed, may be sufficient to establish that the defendant was engaged in the business for profit or economic gain of offering for sale the devices. If you find that (he/she) had five or more *<identify device>* in (his/her) possession or under (his/her) control, you may then find, but are not required to, that (he/she) was in the business for profit or economic gain.]

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was engaged in a business for profit or economic gain, 2) as part of this business, (he/she) offered items for sale to any person other than a supplier of (a/an) (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service

which is not metered or otherwise measured, and 3) the devices allow persons to obtain services at no cost.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of theft of <*identify service*>, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.1-27 Theft of Utility Service -- § 53a-127c (a) (3)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with theft of (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service for profit or economic gain. The statute defining this offense reads in pertinent part as follows:

a person is guilty of theft of (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service for profit or economic gain when (he/she) without the consent of the supplier of (a/an) (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service and with intent to defraud such supplier, engages in the business for profit or economic gain of connecting or disconnecting the meters, pipes, cables, conduits, conductors or attachments of such supplier or in any other manner tampers or connects with such meters, pipes, cables, conduits, conductors or attachments.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Business for profit or economic gain**

The first element is that the defendant was engaged in a business for profit or economic gain.

### **Element 2 - Connected / disconnected**

The second element is that the defendant, as part of this business, (connected / disconnected) the (meters / pipes / cables / conduits / conductors / attachments) of the supplier of (a/an) (electric / gas / water / steam / telecommunications / wireless radio communications / community antenna television) service. *<Identify supplier and type of service.>*

### **Element 3 - No consent**

The third element is that the defendant did not have the consent of the supplier.

### **Element 4 - Intent**

The fourth element is that the defendant intended to defraud the supplier. *<Insert Intent to Defraud, Instruction 2.3-6.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was engaged in a business for profit or economic gain, 2) as part of this business, (he/she) (connected / disconnected) the (meters / pipes / cables / conduits / conductors / attachments) of the supplier, 3) the supplier did not consent to the defendant's conduct, and 4) the defendant intended to defraud the supplier.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of theft of *<identify service>*, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.1-28 Using Motor Vehicle or Vessel without the Owner's Permission -- § 53a-119b (a) and (b)

New, June 13, 2008

The defendant is charged [in count \_\_\_] with using a (motor vehicle / vessel)<sup>1</sup> without the owner's permission. The statute defining this offense reads in pertinent part as follows:

a person is guilty of using a (motor vehicle / vessel) without the owner's permission when (he/she) *<insert appropriate subsection:>*

- **§ 53a-119b (a) (1) and (b) (1):** operates or uses, or causes to be operated or used, any motor vehicle unless (he/she) has the consent of the owner.
- **§ 53a-119b (a) (2) and (b) (2):** obtains the consent of the owner to the use of (his/her) (motor vehicle / vessel) by fraud or fraudulent means, statement or representations.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Operated or used a motor vehicle or vessel**

The first element is that the defendant operated or used [or caused to be operated or used] a (motor vehicle / vessel).

["Vessel" means every description of watercraft, other than a seaplane on water, used or capable of being used as a means of transportation on water.<sup>2</sup>]

A person "operates" a motor vehicle when, while in the vehicle, (he/she) intentionally does any act or makes use of any mechanical or electrical agency that alone or in sequence sets in motion the motive power of the vehicle. A person acts "intentionally" with respect to conduct when (his/her) conscious objective is to engage in such conduct. *<See Intent: General, Instruction 2.3-1.>*

### **Element 2 - Owner's consent**

[*<If defendant is charged under (a) (1) or (b) (1):>* The second element is that the defendant did not have the consent of the owner.<sup>3</sup> "Owner" means not only the lawful owner, but any person who has a superior right to that of the offender. This would include persons who have possession or custody of the motor vehicle with the permission or authority of the true owner, such as repair persons and employees.]

[*<If defendant is charged under (a) (2) or (b) (2):>* The second element is that the defendant obtained the consent of the owner to the use of the (motor vehicle / vessel) by fraud or fraudulent means, statement or representations. This means that the defendant made some statement or representation of some fact or circumstance that was not true and that was calculated to mislead.]

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant operated or used a (motor vehicle / vessel), and 2) (he/she) (did not have the consent of the owner / fraudulently obtained the consent of the owner).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of using a (motor vehicle / vessel) without the owner's permission, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

- 1 Subsections (a) and (b) are identical except for the specification of motor vehicle or vessel.
- 2 Defined in General Statutes § 15-127.
- 3 If the defendant was a passenger in the car, the state must prove that no one else in the car had the owner's permission to use the car and that the defendant knew that such permission was lacking. *In re Adalberto S.*, 27 Conn. App. 49, 52-55, cert. denied, 222 Conn. 903 (1992). In such a case, the instruction should be tailored to include that 1) no one in the car had the owner's permission to use the car, and 2) that the defendant knew that no one had permission.

## ***Commentary***

### ***Subsequent offenders***

General Statutes § 53a-119b (d) provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 53a-119b. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See *Subsequent Offenders*, Instruction 2.12-2.

## 9.1-29 Interfering or Tampering with a Motor Vehicle -- § 53a-119b (c) (1)

New, June 13, 2008

The defendant is charged [in count \_\_\_] with interfering or tampering with a motor vehicle. The statute defining this offense reads in pertinent part as follows:

a person is guilty of interfering or tampering with a motor vehicle when (he/she) puts into motion the engine of any motor vehicle while it is standing without the permission of the owner.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Put engine in motion**

The first element is that the defendant put the engine of a motor vehicle into motion.

### **Element 2 - Owner's consent**

The second element is that the defendant did not have the consent of the owner. "Owner" means not only the lawful owner, but any person who has a superior right to that of the offender. This would include persons who have possession or custody of the motor vehicle with the permission or authority of the true owner, such as repair persons and employees.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant put the engine of a motor vehicle into motion, and 2) (he/she) did not have the consent of the owner.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of interfering or tampering with a motor vehicle, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

The statute provides the following exception to liability: "except that a property owner or (his/her) agent may remove any motor vehicle left without authorization on such owner's property in accordance with section 14-145, which provides for the towing or removal of motor vehicle left on private property without authorization "[W]here exceptions to a prohibition in a criminal statute are situated separately from the enacting clause, the exceptions are to be proven by the defense." (Internal quotation marks omitted.) *State v. Valinski*, 254 Conn. 107, 123 (2000) (rule also applies when the exception is found in a separate statute).

### ***Subsequent offenders***

General Statutes § 53a-119b (d) provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 53a-119b. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury

must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## 9.1-30 Interfering or Tampering with a Motor Vehicle -- § 53a-119b (c) (2)

New, June 13, 2008

The defendant is charged [in count \_\_\_] with interfering or tampering with a motor vehicle. The statute defining this offense reads in pertinent part as follows:

a person is guilty of interfering or tampering with a motor vehicle when, with intent and without right to do so, (he/she) damages any motor vehicle or damages or removes any of its parts or components.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Damage to motor vehicle**

The first element is that the defendant damaged a motor vehicle or removed any of its parts or components. The motor vehicle must have been damaged in such a way as to diminish or lose its value. The motor vehicle is damaged if it sustained a decrease or loss in its value or utility in comparison with its previous condition.

### **Element 2 - Intent**

The second element is that the defendant specifically intended to do damage to the motor vehicle. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 3 - No authorization**

The third element is that the defendant did not have the right or authorization to act as (he/she) did and had no reasonable ground to believe that (he/she) did. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant damaged a motor vehicle or removed any of its parts or components, 2) (he/she) intended to damage the motor vehicle, and 3) (he/she) had no right to do so.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of interfering or tampering with a motor vehicle, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

#### ***Subsequent offenders***

General Statutes § 53a-119b (d) provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 53a-119b. Pursuant to Practice Book §

36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## **9.2 BURGLARY**

### **9.2 Introduction to Burglary**

#### **9.2-1 Burglary in the First Degree -- § 53a-101**

**(a) (1) and (2)**

#### **9.2-2 Burglary in the First Degree -- § 53a-101**

**(a) (3)**

#### **9.2-3 Burglary in the Second Degree -- § 53a-102**

#### **9.2-4 Burglary in the Third Degree -- § 53a-103**

#### **9.2-5 Burglary with a Firearm -- § 53a-102a and § 53a-103a**

#### **9.2-6 Affirmative Defense to Burglary -- § 53a-104**

#### **9.2-7 Manufacturing or Possession of Burglar's Tools -- § 53a-106**

#### **9.2-8 Home Invasion**

## 9.2 Introduction to Burglary

Revised to December 1, 2007

Burglary is not strictly a crime against property. See *State v. MacFarlane*, 188 Conn. 542, 553 (1982) (burglary entails a risk to persons who may be in a building). "It is clear from . . . the comments by the commission to revise the criminal statutes that the basic rationale underlying the enactment of all of our present burglary statutes was protection against the type of invasion of premises likely to terrorize occupants." *State v. Belton*, 190 Conn. 496, 506 (1983). "The three degrees of the crime differ only in terms of aggravating factors for which the basic rationale requires different treatment." (Internal quotation marks omitted.) *State v. Delgado*, 19 Conn. App. 245, 254 (1989).

### ***Intent to commit a crime***

The jury does not have to be unanimous as to which specific crime the defendant intended to commit inside the building as long as the defendant had the intent to commit some crime. *State v. Luster*, 48 Conn. App. 872, 878-79, cert. denied, 246 Conn. 901 (1998). The language "intent to commit a crime therein" does not require that the crime be one against people or property within the building. *State v. Wallace*, 56 Conn. App. 730, 734-37, cert. denied, 253 Conn. 901 (2000) (defendant unlawfully entered a residence with the intent to evade the police). The Court noted in *Wallace*, that "the crime of trespass or any other crime related to the breaking and entering actions of burglary itself may not be considered . . . to be a 'crime therein.'" *Id.*, 735 n.7. The "better practice" is to "instruct the jury on the statutory names and definitions of specific crimes for which there was sufficient evidence of an intent to commit." *State v. Zayas*, 195 Conn. 611, 618 (1985). See also *State v. Flowers*, 278 Conn. 533, 547 (2006) (court improperly instructed jury that the predicate crime was attempted assault); *State v. Russell*, 101 Conn. App. 298, 323, cert. denied, 284 Conn. 910 (2007) (violation of a protective order by entering a dwelling is not a legally viable predicate offense for burglary).

### ***Lesser included offenses***

Second degree burglary is not a lesser included offense of first degree burglary, because second degree requires that the entry be into a dwelling, while first degree only requires that it be a building. *State v. Coleman*, 242 Conn. 523, 533 (1997). In *State v. Ward*, 76 Conn. App. 779, 789-94, cert. denied, 264 Conn. 918 (2003), the Appellate Court distinguished *Coleman* based on the specificity of the charging documents, holding that second degree burglary could be a lesser included offense of first degree if the charging documents put the defendant on notice that the allegations against him were that he entered a dwelling at night, rather than simply a building.

Burglary in the third degree is a lesser included offense of burglary in the first degree. *State v. Grant*, 177 Conn. 140, 147 (1979) (the distinguishing factor in first degree is the use of a weapon).

Criminal trespass in the second degree is a lesser included offense of burglary in the second degree with a firearm. *State v. White*, 97 Conn. App. 763, 780, cert. denied, 280 Conn. 939 (2006) (building for purposes of criminal trespass comes within dwelling for burglary).

Burglary in the first degree and robbery in the first degree are separate offenses. *State v. Perez*, 78 Conn. App. 610, 638-43, cert. denied, 271 Conn. 901 (2003).

Burglary in the first degree and criminal trespass in the first degree are separate offenses.  
*State v. Delgado*, supra, 19 Conn. 253-55.

## 9.2-1 Burglary in the First Degree -- § 53a-101 (a) (1) and (2)

Revised to April 23, 2010

The defendant is charged [in count \_\_\_] with burglary in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of burglary in the first degree when (he/she) unlawfully (enters / remains in)<sup>1</sup> a building with intent to commit a crime therein and *<insert appropriate subsection:>*

- **§ 53a-101 (a) (1):** (he/she) is armed with explosives or a deadly weapon or dangerous instrument.
- **§ 53a-101 (a) (2):** in the course of committing the offense, (he/she) intentionally, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Entered/Remained in building**

The first element is that the defendant knowingly and unlawfully (entered / remained in) a building. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. *<See Knowledge, Instruction 2.3-3.>*

Ordinarily, "building" implies a structure that may be entered and used by people as a residence or for business or for other purposes involving occupancy by people, whether or not it is actually entered and used as such. *<Insert one or both of the following parts of the definition as appropriate:>*

- The statutory definition expands this definition to include, in addition to what we ordinarily know as a building, any watercraft, aircraft, trailer, sleeping car, railroad car, other structure or vehicle or any building with a valid certificate of occupancy.
- The statutory definition also provides that where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not occupied by the defendant is, in addition to being a part of such building, a separate building. In other words, any one of these separate units, separately secured or occupied, when intruded upon, may be considered a "building," plus the whole building is considered a "building" for purposes of any unlawful intrusion into any part of it.

You must also determine whether the defendant unlawfully (entered / remained in) the building. A person unlawfully (enters / remains in) a building when the building, at the time, is not open to the public and the defendant is not licensed or privileged to do so. To be "licensed or privileged," the defendant must either have consent from the person in possession of the building or have some other right to be in the building.

[To "enter" a building the intruder need not necessarily place (his/her) entire body inside the building. Inserting any part of (his/her) body, or an implement or weapon held by (him/her),

within the building is sufficient to constitute an entry as long as it is done without license or privilege. It does not matter how an intruder may actually have entered; if (he/she) did so without license or privilege, (he/she) has entered unlawfully.]

[A person may have entered a building lawfully, that is, (he/she) had the right or had been given permission, but that right is terminated or the permission withdrawn by someone who had a right to terminate or withdraw it. You may find that the defendant "unlawfully remained" in the building under these circumstances.]

### **Element 2 - Intent to commit crime**

The second element is that the defendant unlawfully (entered / remained in) the building with the intent to commit a crime in the building. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

Even if the defendant never actually committed a crime in the building, if the evidence establishes beyond a reasonable doubt that (he/she) was there with such intention, this is sufficient to prove that the defendant unlawfully (entered / remained in) the building with the intent to commit a crime therein. Furthermore, the necessary intent to commit a crime must be an intent to commit either a felony or a misdemeanor in addition to the unlawful (entering / remaining in) the building.

In this case, the state claims that the defendant intended to commit <insert crime>. <Refer to the count in which this crime is charged or, if uncharged, give the elements of the crime.>

### **Element 3 - Weapon or injury**

The third element is that <insert as appropriate:>

- the defendant was armed with (explosives / a deadly weapon / a dangerous instrument)  
This means that the defendant at some point of (entering / remaining in)<sup>2</sup> the building had actual physical possession of (explosives / a deadly weapon / a dangerous instrument). [<If explosives or a deadly weapon are alleged:> It is not necessary that the defendant actually use or even show it, or that any participant even know that the other has it in (his/her) possession. It does not matter how long a period of time any participant was so armed, or how quickly (he/she) came into possession of or disposed of such arms.] <Insert appropriate definitions:>
- "Deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles.
- "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any

- article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.
- "Explosive" is any chemical compound, mixture, or device that functions by explosion.<sup>3</sup>
  - in the course of committing the offense,<sup>4</sup> the defendant (intentionally / knowingly / recklessly)<sup>5</sup> inflicted or attempted to inflict bodily injury on someone. "Bodily injury" means impairment of physical condition or pain.<sup>6</sup> The defendant need not actually have inflicted bodily injury on anyone as long as (he/she) attempted to inflict an injury on someone in the course of committing the burglary. An act is deemed to be "in the course of committing the offense," if it occurs in an attempt to commit the offense or flight after the attempt or commission.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) unlawfully (entered / remained in) a building, 2) (he/she) had the intent to commit a crime, and 3) *<describe the allegations concerning weapons or injuries>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of burglary in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Do not instruct on both "unlawful entering" and "unlawful remaining" if the information and the evidence could support a conceptual distinction between the two. See "enters or remains unlawfully" in the glossary.

<sup>2</sup> The person must be armed while entering the building or while in the building. It does not include "while in immediate flight from." *State v. Belton*, 190 Conn. 496, 509-510 (1983); *State v. Owens*, 39 Conn. App. 45, 53, cert. denied, 235 Conn. 927 (1995) (reversed for improperly charging so). In *State v. Grant*, 177 Conn. 140, 146 (1979), there was evidence that a tire iron was used to break the window to gain entry to the building, but not that it was used against the person. "Whether a person arms himself with a dangerous instrument after entering the dwelling or enters the dwelling already armed is irrelevant with respect to his culpability under the statute." *State v. Rozmyslowicz*, 52 Conn. App. 149, 153 (1999); *State v. Brooks*, 88 Conn. App. 204, 210-11, cert. denied, 273 Conn. 933 (2005).

<sup>3</sup> Also see definition in General Statutes § 29-343.

<sup>4</sup> Note that one cannot "recklessly" attempt to inflict injury.

<sup>5</sup> "In the course of" includes flight from. General Statutes § 53a-101 (b). See also *State v. Maxwell*, 29 Conn. App. 704, 712 (1992), cert. denied, 225 Conn. 904, cert. denied, 509 U.S.

930, 113 S.Ct. 3057, 125 L.Ed.2d 740 (1993) (rejecting defendant's claim that the injury occurred during a later altercation after he had fled the scene).

<sup>6</sup> See *State v. Coleman*, 48 Conn. App. 260, 270-71 (1998) ("bodily injury" need not exclude "pain"); *State v. Phillips*, 17 Conn. App. 391, 393-94 (1989) (defining bodily injury with reference to pain did not mislead jury into thinking it could convict based on the victim's mental pain).

#### ***Commentary***

The elements of § 53a-101 (a) (1) are outlined in *State v. Weaver*, 85 Conn. App. 329, 342, cert. denied, 271 Conn. 942 (2004).

Burglary in the first degree pursuant to § 53a-101 (a) (1) and § 53a-101 (a) (2) are separate offenses, requiring proof of different elements. *State v. Peay*, 96 Conn. App. 421, 428-29, cert. denied, 280 Conn. 909 (2006).

## 9.2-2 Burglary in the First Degree -- § 53a-101 (a) (3)

Revised to November 1, 2008

**Note:** This instruction applies to crimes committed on or after March 1, 2008. For crimes committed before that date, see the 9.2-2A in the Archive.

The defendant is charged [in count \_\_\_] with burglary in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of burglary in the first degree when such person unlawfully (enters / remains in)<sup>1</sup> a dwelling at night with intent to commit a crime therein.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Entered/remained in dwelling**

The first element is that the defendant knowingly and unlawfully (entered / remained in) a dwelling. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

"Dwelling" means a building that is usually occupied by a person lodging therein at night, whether or not a person is actually present. Therefore, a structure that cannot possibly be occupied as a lodging cannot be a dwelling. It need not, however, be actually occupied by any person at the time of crime; it does not lose its character as a dwelling merely because it is temporarily unoccupied, if such occupancy at night is its usual state.

You must also determine whether the defendant unlawfully (entered / remained in) the dwelling. A person unlawfully (enters / remains in) a dwelling when (he/she) is not licensed or privileged to do so. To be "licensed or privileged," the defendant must either have consent from the person in possession of the dwelling or have some other right to be in the dwelling.

[To "enter" a dwelling the intruder need not necessarily place (his/her) entire body inside the dwelling. Inserting any part of (his/her) body, or an implement or weapon held by (him/her), within the dwelling is sufficient to constitute an entry as long as it is without license or privilege. It does not matter how an intruder may actually have entered; if (he/she) did so without license or privilege, (he/she) has entered unlawfully.]

[A person may have entered a dwelling lawfully, that is, (he/she) had the right or had been given permission, but that right is terminated or the permission withdrawn by someone who had a right to terminate or withdraw it. You may find that the defendant "unlawfully remained" in the dwelling under these circumstances.]

### **Element 2 - At night**

The second element is that the defendant (entered / remained in) the dwelling at night. "Night" means the period between thirty minutes after sunset and thirty minutes before sunrise.<sup>2</sup>

### **Element 3 - Intent to commit a crime**

The third element is that the defendant intended to commit a crime in that dwelling. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

Even if the defendant never actually committed a crime in the dwelling, if the evidence establishes beyond a reasonable doubt that (he/she) was there with such intention, this is sufficient to prove that the defendant unlawfully (entered / remained in) the dwelling with the intent to commit a crime therein. Furthermore, the necessary intent to commit a crime must be an intent to commit either a felony or a misdemeanor in addition to the unlawful entering or remaining in the dwelling.

In this case, the state claims that the defendant intended to commit <insert crime>. <Refer to the count in which this crime is charged or, if uncharged, give the elements of the crime.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) unlawfully (entered / remained in) a dwelling, 2) it was at night, and 3) (he/she) had the intent to commit a crime.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of burglary in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Do not instruct on both "unlawful entering" and "unlawful remaining" if the information and the evidence could support a conceptual distinction between the two. See "enters or remains unlawfully" in the glossary.

<sup>2</sup> "The time of sunrise and sunset on any given day is a matter that falls within the realm of facts which are capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy and therefore may be judicially noticed." *State v. Zayas*, 195 Conn. 611, 614 (1985).

## 9.2-3 Burglary in the Second Degree -- § 53a-102

Revised to November 1, 2008

The defendant is charged [in count \_\_\_] with burglary in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of burglary in the second degree when such person unlawfully (enters / remains in)<sup>1</sup> a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with intent to commit a crime therein.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Entered/remained in dwelling**

The first element is that the defendant knowingly and unlawfully (entered / remained in) a dwelling. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

"Dwelling" means a building that is usually occupied by a person lodging therein at night. Therefore, a structure that cannot possibly be occupied as a lodging cannot be a dwelling.

You must also determine whether the defendant unlawfully (entered / remained in) the dwelling. A person unlawfully (enters / remains in) a dwelling when (he/she) is not licensed or privileged to do so. To be "licensed or privileged," the defendant must either have consent from the person in possession of the dwelling or have some other right to be in the dwelling.

[To "enter" a dwelling the intruder need not necessarily place (his/her) entire body inside the dwelling. Inserting any part of (his/her) body, or an implement or weapon held by (him/her), within the dwelling is sufficient to constitute such entry as long as it is without license or privilege. It does not matter how an intruder may actually have entered; if (he/she) did so without license or privilege, (he/she) has entered unlawfully.]

[A person may have entered a dwelling lawfully, that is, (he/she) had the right or had been given permission, but that right is terminated or the permission withdrawn by someone who had a right to terminate or withdraw it. You may find that the defendant "unlawfully remained" in the dwelling under these circumstances.]

### **Element 2 - Intent to commit a crime**

The second element is that the defendant intended to commit a crime in that dwelling. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

Even if the defendant never actually committed a crime in the dwelling, if the evidence establishes beyond a reasonable doubt that (he/she) was there with such intention, this is sufficient to prove that the defendant unlawfully (entered / remained in) the dwelling with the

intent to commit a crime therein. Furthermore, the necessary intent to commit a crime must be an intent to commit either a felony or a misdemeanor in addition to the unlawful entering or remaining in the dwelling.

In this case, the state claims that the defendant intended to commit *<insert crime>*. *<Refer to the count in which this crime is charged or, if uncharged, give the elements of the crime.>*

**Element 3 - Persons present in dwelling**

The third element is that when the defendant (entered / remained in) the dwelling, a person other than a participant in the crime was actually present in the dwelling.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) unlawfully (entered / remained in) a dwelling, 2) (he/she) had the intent to commit a crime, and 3) a person other than a participant in the crime was actually present in the dwelling.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of burglary in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Do not instruct on both "unlawful entering" and "unlawful remaining" if the information and the evidence could support a conceptual distinction between the two. See "enters or remains unlawfully" in the glossary.

## 9.2-4 Burglary in the Third Degree -- § 53a-103

Revised to November 1, 2008

The defendant is charged [in count \_\_\_] with burglary in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of burglary in the third degree when (he/she) unlawfully (enters / remains in)<sup>1</sup> a building with intent to commit a crime therein.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Entered/Remained in building**

The first element is that the defendant knowingly and unlawfully (entered / remained in) a building. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

Ordinarily, "building" implies a structure that may be entered and used by human beings, as a residence or for business, or for other purposes involving occupancy by people, whether or not it is actually entered and used as such. <Insert one or both of the following parts of the definition as appropriate:>

- The law has expanded this definition to include, in addition to what we ordinarily know as a building, any watercraft, aircraft, trailer, sleeping car, railroad car, other structure or vehicle or any building with a valid certificate of occupancy.
- The statutory definition also provides that where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not occupied by the defendant is, in addition to being a part of such building, a separate building. In other words, any one of these separate units, separately secured or occupied, when intruded upon, may be considered a "building," plus the whole building is considered a "building" for purposes of any unlawful intrusion into any part of it.

You must also determine whether the defendant unlawfully (entered / remained in) the building. A person unlawfully (enters / remains in) a building when the building, at the time, is not open to the public and the defendant is not licensed or privileged to do so. To be "licensed or privileged," the defendant must either have consent from the person in possession of the building or have some other right to be in the building.

[To "enter" a building the intruder need not necessarily place (his/her) entire body inside the building. Inserting any part of (his/her) body, or an implement or weapon held by (him/her), within the building is sufficient to constitute an entry as long as it is without license or privilege. It does not matter how an intruder may actually have entered; if (he/she) did so without license or privilege, (he/she) has entered unlawfully.]

[A person may have entered a building lawfully, that is, (he/she) had the right or had been given permission, but that right is terminated or the permission withdrawn by someone who had a right

to terminate or withdraw it. You may find that the defendant "unlawfully remained" in the building under these circumstances.]

### **Element 2 - Intent to commit crime**

The second element is that the defendant unlawfully (entered / remained in) the building with the intent to commit a crime in the building. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

Even if the defendant never actually committed a crime in the building, if the evidence establishes beyond a reasonable doubt that (he/she) was there with such intention, this is sufficient to prove that the defendant unlawfully (entered / remained in) the building with the intent to commit a crime therein. Furthermore, the necessary intent to commit a crime must be an intent to commit either a felony or a misdemeanor in addition to the unlawful entering or remaining in the building.

In this case, the state claims that the defendant intended to commit <insert crime>. <Refer to the count in which this crime is charged or, if uncharged, give the elements of the crime.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant unlawfully (entered / remained in) a building, and 2) (he/she) had the intent to commit a crime therein.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of burglary in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Do not instruct on both "unlawful entering" and "unlawful remaining" if the information and the evidence could support a conceptual distinction between the two. See "enters or remains unlawfully" in the glossary.

## 9.2-5 Burglary with a Firearm -- § 53a-102a and § 53a-103a

Revised to December 1, 2007

**Note: The degree of the offense depends on the degree of the underlying crime.**

The defendant is charged [in count \_\_\_] with burglary in the (second / third) degree with a firearm. The statute defining this offense reads in pertinent part as follows:

a person is guilty of burglary in the (second / third) degree with a firearm when (he/she) commits burglary in the (second / third) degree and in the commission of such offense (he/she) (uses / is armed with and threatens the use of / displays or represents by (his/her) words or conduct that (he/she) possesses) a pistol, revolver, rifle, shotgun, machine gun or other firearm.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Committed burglary in the second or third degree**

The first element is that the defendant committed burglary in the (second / third) degree. <See instruction for underlying crime:>

- § 53a-102: Burglary in the Second Degree, Instruction 9.2-3.
- § 53a-103: Burglary in the Third Degree, Instruction 9.2-4.

### **Element 2 - With a firearm**

The second element is that in the commission of the burglary the defendant <insert as appropriate:><sup>1</sup>

- used a firearm.
- was armed with and threatened the use of a firearm.
- displayed or represented by (his/her) words or conduct that (he/she) possessed a firearm. [<If appropriate:> It is not required that what the defendant represents to be a firearm be loaded or that the defendant actually have a firearm. It need only be represented by words or conduct that (he/she) is so armed.]

<Describe specific allegations regarding firearm.> "Firearm" means any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged.<sup>2</sup> You must find that the firearm was operable at the time of the incident.<sup>3</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that <insert the concluding summary from the instruction for the underlying crime>, and that in the commission of the crime the defendant (used / was armed with and threatened the use of / displayed or represented by words or conduct that (he/she) possessed) a pistol, revolver, rifle, shotgun, machine gun or other firearm.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of burglary in the (second / third) degree with a firearm, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Carefully tailor this part of the instruction according to the nature of the conduct alleged and the type of firearm involved. See *State v. Tomlin*, 266 Conn. 608, 626-27 (2003) (allegation of "did shoot" only supported instructing on the first of three distinct methods of committing the offense).

<sup>2</sup> See definitions for machine gun, rifle, shotgun, pistol or revolver in the glossary.

<sup>3</sup> The defendant may raise as an affirmative defense that the firearm was not operable. See *Inoperability of Firearm*, Instruction 2.9-3.

#### ***Commentary***

On the elements, see *State v. White*, 97 Conn. App. 763, 777, cert. denied, 280 Conn. 939 (2006).

"No person shall be convicted of burglary in the second degree and burglary in the second degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information." General Statutes § 53a-102a (a).

"No person shall be convicted of burglary in the third degree and burglary in the third degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information." General Statutes § 53a-103a (a).

## 9.2-6 Affirmative Defense to Burglary -- § 53a-104

Revised to December 1, 2007

The defendant has raised an affirmative defense to the charge of burglary. The state has the burden of proving beyond a reasonable doubt each of the elements of burglary in the (first / second / third) degree. If you are satisfied that the state has proved these elements beyond a reasonable doubt, you must still consider whether the defendant has proved (his/her) affirmative defense.

*<See Affirmative Defense, Instruction 2.9-1.>*

The defendant claims that the building involved in the offense was abandoned. The word "abandon," as used in the statute, has a meaning in law that is not entirely the same as in everyday speech. It is not enough to show that the building was vacant or unoccupied or uncared for. To prove abandonment, the defendant must convince you, by a preponderance of the evidence, that the owner had totally withdrawn from the building, had laid aside all care for it, and had left it altogether to itself, voluntarily relinquishing possession of it with the intention of terminating ownership, but without vesting it in any other person.<sup>1</sup>

*<Substitute the following paragraphs for the final paragraph in the instruction for burglary:>*  
If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of burglary in the (first / second / third) degree, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved (his/her) defense by a preponderance of the evidence, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

---

<sup>1</sup> Black's Law Dictionary (8th Ed. 2004).

## 9.2-7 Manufacturing or Possession of Burglar's Tools -- § 53a-106

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with manufacturing or possession of burglar's tools. The statute defining this offense reads in pertinent part as follows:

a person is guilty of (manufacturing / possession of) burglar's tools when (he/she) (manufactures / has in (his/her) possession) any tool, instrument or other thing adapted, designed or commonly used for advancing or facilitating offenses involving unlawful entry into premises, or offenses involving forcible breaking of safes or other containers or depositories of property, under circumstances manifesting an intent to use or knowledge that some person intends to use the same in the commission of an offense of such character.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Manufactured or possessed burglar's tools**

The first element is that the defendant (manufactured / possessed) burglar's tools. As the statute provides, the term "burglar's tools" may include any tool, instrument or other thing adapted, designed or commonly used for advancing or facilitating offenses involving unlawful entry into premises, or offenses involving forcible breaking of safes or other containers or depositories of property. It is not necessary for you to determine that the implements are adaptable and usable solely for a criminal purpose. Where such implements do have a legitimate use, however, it must be established that they could have been used criminally.

<Insert appropriate definition(s):>

- To "manufacture" means to make or fabricate.
- To "possess" means to have physical possession or otherwise to exercise dominion or control over tangible property and to have knowledge of its character. It is also sufficient if the defendant requested, solicited or aided any other person in such possession or jointly had possession with another who was engaged in a joint action with the defendant. It is not, however, necessary to prove the defendant's ownership or any degree of permanency in the possession of the burglar's tools. <See *Possession, Instruction 2.11-1.*>

### **Element 2 - Intent**

The second element is that the defendant (manufactured / possessed) the burglar's tools with the intent to use them or had knowledge that some person intended to use them for the unlawful entry into premises or the forcible breaking of safes or other containers or depositories of property. It is not necessary for the state to show a specific time or place in which the defendant intended to use the tools, but only the intent that they were going to be so used. Therefore, the evidence presented is of a circumstantial nature. You may draw reasonable and logical inferences from any proved facts to determine whether the defendant had the requisite intent.

*<See Intent: Specific, Instruction 2.3-1, and Knowledge, Instruction 2.3-3.>*

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (manufactured / possessed) burglar's tools, and 2) (he/she) had the (intent to use them / knowledge that someone else would use them) to break into another's property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of manufacturing or possessing burglar's tools, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.2-8 Home Invasion -- § 53a-100aa

Revised to April 23, 2010 (modified November 6, 2014)

The defendant is charged [in count \_\_\_] with home invasion. The statute<sup>1</sup> defining this offense reads in pertinent part as follows:

a person is guilty of home invasion when such person unlawfully (enters / remains in)<sup>2</sup> a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with intent to commit a crime therein, and, in the course of committing the offense <insert appropriate subsection:>

- **(a) (1):** acting either alone or with one or more persons, such person or another participant in the crime commits or attempts to commit a felony against the person of another person other than a participant in the crime who is actually present in such dwelling.
- **(a) (2):** such person is armed with explosives or a deadly weapon or dangerous instrument.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Entered/remained in dwelling**

The first element is that the defendant knowingly and unlawfully (entered / remained in) a dwelling. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

"Dwelling" means a building that is usually occupied by a person lodging therein at night. Therefore, a structure that cannot possibly be occupied as a lodging cannot be a dwelling.

You must also determine whether the defendant unlawfully (entered / remained in) the dwelling. A person unlawfully (enters / remains in) a dwelling when (he/she) is not licensed or privileged to do so. To be "licensed or privileged," the defendant must either have consent from the person in possession of the dwelling or have some other right to be in the dwelling.

[To "enter" a dwelling the intruder need not necessarily place (his/her) entire body inside the dwelling. Inserting any part of (his/her) body, or an implement or weapon held by (him/her), within the dwelling is sufficient to constitute such entry as long as it is without license or privilege. It does not matter how an intruder may actually have entered; if (he/she) did so without license or privilege, (he/she) has entered unlawfully.]

[A person may have entered a dwelling lawfully, that is, (he/she) had the right or had been given permission, but that right is terminated or the permission withdrawn by someone who had a right to terminate or withdraw it. You may find that the defendant "unlawfully remained" in the dwelling under these circumstances.]

**Element 2 - Intent to commit a crime**

The second element is that the defendant intended to commit a crime in that dwelling. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

Even if the defendant never actually committed a crime in the dwelling, if the evidence establishes beyond a reasonable doubt that (he/she) was there with such intention, this is sufficient to prove that the defendant unlawfully (entered / remained in) the dwelling with the intent to commit a crime therein. Furthermore, the necessary intent to commit a crime must be an intent to commit either a felony or a misdemeanor in addition to the unlawful entering or remaining in the dwelling.

In this case, the state claims that the defendant intended to commit *<insert crime>*. *<Refer to the count in which this crime is charged or, if uncharged, give the elements of the crime.>*

**Element 3 - Persons present in dwelling**

The third element is that when the defendant (entered / remained in) the dwelling, a person other than a participant in the crime was actually present in the dwelling.

**Element 4 - Additional factor**

The fourth element is that in the course of committing the home invasion, *<insert as appropriate:>*

- the defendant, acting either alone or with one or more persons, or another participant in the crime committed or attempted to commit a felony against the person of another person other than a participant in the crime who is actually present in such dwelling. *<Instruct on the felony or refer back to the instruction on another count charging the felony.>*<sup>3</sup> As a matter of law, *<insert crime>* is a felony.
- the defendant was armed with explosives or a deadly weapon or dangerous instrument. This means that the defendant at some point of (entering / remaining in)<sup>4</sup> the building had actual physical possession of (explosives / a deadly weapon / a dangerous instrument). [*<If explosives or a deadly weapon are alleged:>* It is not necessary that the defendant actually use or even show it, or that any participant even know that the other has it in (his/her) possession. It does not matter how long a period of time any participant was so armed, or how quickly (he/she) came into possession of or disposed of such arms.] *<Insert appropriate definitions:>*
  - "Deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles.
  - "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any

may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

- "Explosive" is any chemical compound, mixture, or device that functions by explosion.<sup>5</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) unlawfully entered or remained in a dwelling, 2) (he/she) intended to commit a crime in the dwelling, 3) another person, other than a participant in the home invasion, was actually present in the dwelling, and 4) *<insert additional factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of home invasion, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Public Acts, Spec. Sess., January, 2008, 08-1, § 1, which created this offense, became effective March 1, 2008.

<sup>2</sup> Do not instruct on both "unlawful entering" and "unlawful remaining" if the information and the evidence could support a conceptual distinction between the two. See "enters or remains unlawfully" in the glossary.

<sup>3</sup> If the underlying felony is an attempt crime, the court must instruct the jury on the definition of criminal attempt. *Small v. Commissioner of Correction*, 286 Conn. 707, 727 (2008). See Attempt -- § 53a-49 (a) (1), Instruction 3.2-1 and Attempt -- § 53a-49 (a) (2), Instruction 3.2-2.

<sup>4</sup> The person must be armed while entering the building or while in the building. It does not include "while in immediate flight from." *State v. Belton*, 190 Conn. 496, 509-510 (1983); *State v. Owens*, 39 Conn. App. 45, 53, cert. denied, 235 Conn. 927 (1995) (reversed for improperly charging so). In *State v. Grant*, 177 Conn. 140, 146 (1979), there was evidence that a tire iron was used to break the window to gain entry to the building, but not that it was used against the person. "Whether a person arms himself with a dangerous instrument after entering the dwelling or enters the dwelling already armed is irrelevant with respect to his culpability under the statute." *State v. Rozmyslowicz*, 52 Conn. App. 149, 153 (1999); *State v. Brooks*, 88 Conn. App. 204, 210-11, cert. denied, 273 Conn. 933 (2005).

<sup>5</sup> Also see definition in General Statutes § 29-343.

### **Commentary**

In *State v. Gemmell*, 151 Conn. App. 590, 608-611, cert. denied, 314 Conn. 915 (2014), the defendant submitted a request to charge that combined elements 1 and 3 as laid out above, which read "The first element is that the defendant knowingly and unlawfully entered a dwelling while the dwelling was occupied." This could have led the jury to conclude that the defendant

had to have known that the dwelling was occupied. The trial court, instead, gave this model instruction. The Appellate Court held that this was the accurate statement of the law.

## **9.3 ARSON**

**9.3-1 Arson in the First Degree -- § 53a-111**

**9.3-2 Arson in the Second Degree -- § 53a-112 (a)**  
**(1)**

**9.3-3 Arson in the Second Degree -- § 53a-112 (a)**  
**(2)**

**9.3-4 Arson in the Third degree -- § 53a-113**

**9.3-5 Reckless Burning -- § 53a-114**

## 9.3-1 Arson in the First Degree -- § 53a-111

Revised to December 1, 2007 (modified November 6, 2014)

The defendant is charged [in count \_\_\_] with arson in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of arson in the first degree when, with intent to destroy or damage a building (he/she) starts a fire or causes an explosion, and <insert appropriate subsection:>

- § 53a-111 (a) (1): the building is inhabited or occupied or the person has reason to believe the building may be inhabited or occupied.
- § 53a-111 (a) (2): any other person is injured, either directly or indirectly.
- § 53a-111 (a) (3): such fire or explosion was caused for the purpose of collecting insurance proceeds for the resultant loss.
- § 53a-111 (a) (4): at the scene of such fire or explosion a peace officer or firefighter is subjected to a substantial risk of bodily injury.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Started or caused fire or explosion<sup>1</sup>

The first element is that the defendant started or caused a fire or explosion. To "start" means to commence. To "cause an act to be done" is to bring it about. The fire started need not be a tremendous one. The mere striking of a match can be the start of a fire. The fire or explosion must be incendiary in origin. That is, it must not be accidental or caused by carelessness. In considering whether the fire or explosion was incendiary in origin, you may rely upon all the facts and circumstances at the time and place of the fire or explosion, as you find them to have been proved, and may draw any reasonable or logical inferences from such facts. The mere fact that there was fire or explosion damage to a building does not create an inference that its origin was incendiary.

### Element 2 - Intent

The second element is that the defendant specifically intended to destroy or damage a building.<sup>2</sup> A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

Ordinarily, "building" implies a structure that may be entered and used by people as a residence or for business, or for other purposes involving occupancy by people, whether or not it is actually entered and used as such. <Insert one or both of the following parts of the definition as appropriate:>

- The law has expanded this definition to include, in addition to what we ordinarily know as a building, any watercraft, aircraft, trailer, sleeping car, railroad car, other structure or vehicle or any building with a valid certificate of occupancy.
- The statutory definition also provides that where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not

occupied by the defendant is, in addition to being a part of such building, a separate building.

### **Element 3 - Additional factor**

The third element is that *<insert as appropriate:>*

- § 53a-111 (a) (1): the building was in fact inhabited or occupied or defendant had reason to believe that the building was inhabited or occupied and nevertheless started the fire or caused the explosion.
- § 53a-111 (a) (2): any person other than the defendant was injured either directly or indirectly. This could include an accomplice.<sup>3</sup> The statute does not require that the injury sustained be serious, but the injury must nevertheless be real. The injury may be a direct or indirect consequence of the fire or explosion, but there must be a causal relationship between the fire or explosion and the injury. Also, the defendant need not have intended to cause the injury.<sup>4</sup>
- § 53a-111 (a) (3): the defendant caused the fire or explosion for the purpose of collecting insurance proceeds. In other words, the state must prove beyond a reasonable doubt that the defendant's reason for causing the fire or explosion was to collect insurance proceeds.
- § 53a-111 (a) (4): at the scene of the fire or explosion, a (peace officer / firefighter) was subjected to a substantial risk of bodily injury. A "substantial risk of injury" is one that is real, considerable or material.<sup>5</sup> *<Insert appropriate definition:>*
  - A "peace officer" includes *<insert type of peace officer>*.
  - A "firefighter" means any agent of a municipality whose duty is to protect life and property therein as a member of a duly constituted fire department whether professional or volunteer.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant started or caused a fire or explosion, 2) (he/she) intended to destroy or damage *<identify the building>*, and 3) *<insert appropriate additional factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of arson in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Houle*, 105 Conn. App. 813, 818 n.4 (2008) (on the meaning of incendiary); *State v. Gaines*, 36 Conn. App. 454, 458-59 (1995) (on the meaning of "causing a fire").

<sup>2</sup> *State v. Chasse*, 51 Conn. App. 345, 367-72, cert. denied, 247 Conn. 960-61 (1999).

<sup>3</sup> *State v. Pellegrino*, 194 Conn. 279, 285 (1984).

<sup>4</sup> *State v. Newton*, 59 Conn. App. 507, 517, cert. denied, 254 Conn. 936 (2000) (firefighters injured when their fire truck was struck by a motorist).

<sup>5</sup> *State v. Dubose*, 75 Conn. App. 163, 174-75, cert. denied, 263 Conn. 909 (2003).

***Commentary***

Subsection (a) (3) and (a) (4) are separate and distinct offenses. *State v. Woodson*, 227 Conn. 1, 9 (1993).

Criminal mischief is not a lesser included offense of first degree arson. *State v. Chance*, 236 Conn. 31, 54-57 (1996).

## 9.3-2 Arson in the Second Degree -- § 53a-112 (a) (1)

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with arson in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of arson in the second degree when, with intent to destroy or damage a building, (he/she) starts a fire or causes an explosion and <insert appropriate subsection:>

- § 53a-112 (a) (1) (A): such act subjects another person to a substantial risk of bodily injury.
- § 53a-112 (a) (1) (B): such fire or explosion was intended to conceal some other criminal act.
- § 53a-112 (a) (1) (C): such fire or explosion was intended to subject another person to a deprivation of a right, privilege or immunity secured or protected by the constitution or laws of this state or of the United States

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Started or caused fire or explosion<sup>1</sup>

The first element is that the defendant started or caused a fire or explosion. To "start" means to commence. To "cause an act to be done" is to bring it about. The fire started need not be a tremendous one. The mere striking of a match can be the start of a fire. The fire or explosion must be incendiary in origin. That is, it must not be accidental or caused by carelessness. In considering whether the fire or explosion was incendiary in origin, you may rely upon all the facts and circumstances at the time and place of the fire or explosion, as you find them to have been proved, and may draw any reasonable or logical inferences from such facts. The mere fact that there was fire or explosion damage to a building does not create an inference that its origin was incendiary.

### Element 2 - Intent

The second element is that the defendant specifically intended to destroy or damage a building.<sup>2</sup> A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

Ordinarily, "building" implies a structure that may be entered and used by people, as a residence or for business, or for other purposes involving occupancy by people, whether or not it is actually entered and used as such. <Insert one or both of the following parts of the definition as appropriate:>

- The law has expanded this definition to include, in addition to what we ordinarily know as a building, any watercraft, aircraft, trailer, sleeping car, railroad car, other structure or vehicle or any building with a valid certificate of occupancy.
- The statutory definition also provides that where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not

occupied by the defendant is, in addition to being a part of such building, a separate building.

### **Element 3 - Additional factor**

The third element is that *<insert as appropriate:>*

- **§ 53a-112 (a) (1) (A):** the defendant's act of starting a fire or causing an explosion subjected another person to a substantial risk of bodily injury. A "substantial risk of bodily injury" means a risk that is real, considerable and material.
- **§ 53a-112 (a) (1) (B):** the defendant's intention was to conceal some other criminal act. You must find that the defendant committed a criminal act and that (he/she) started the fire or caused the explosion with the intent to conceal that act. In this case, the state claims that the defendant committed the crime of *<insert name of crime>*. The elements of that offense are *<refer to instruction on alleged crime>*.
- **§ 53a-112 (a) (1) (C):** the defendant's act of starting a fire or causing an explosion was intended to subject another person to a deprivation of a right, privilege or immunity secured or protected by the constitution or laws of this state or of the United States. Rights, privileges and immunities are generally synonymous terms referring to the guarantees that all citizens of this country enjoy, including but not limited to ownership of property, life, liberty and the exercise of civil rights.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant started or caused a fire or explosion, 2) (he/she) intended to destroy or damage *<identify the building>*, and 3) *<insert appropriate additional factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of arson in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Houle*, 105 Conn. App. 813, 818 n.4 (2008) (on the meaning of incendiary); *State v. Gaines*, 36 Conn. App. 454, 458-59 (1995) (on the meaning of "causing a fire").

<sup>2</sup> *State v. Dubose*, 75 Conn. App. 163, 174-75, cert. denied, 263 Conn. 909 (2003).

## 9.3-3 Arson in the Second Degree -- § 53a-112 (a) (2)

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with arson in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of arson in the second degree when, with intent to destroy or damage a building, a fire or explosion was caused by an individual hired by such person to start such fire or cause such explosion.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Intent

The first element is that the defendant specifically intended to destroy or damage a building.<sup>1</sup> A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

Ordinarily, "building" implies a structure that may be entered and used by people, as a residence or for business, or for other purposes involving occupancy by people, whether or not it is actually entered and used as such. <Insert one or both of the following parts of the definition as appropriate:>

- The law has expanded this definition to include, in addition to what we ordinarily know as a building, any watercraft, aircraft, trailer, sleeping car, railroad car, other structure or vehicle or any building with a valid certificate of occupancy.
- The statutory definition also provides that where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not occupied by the defendant is, in addition to being a part of such building, a separate building.

### Element 2 - Hired another person

The second element is that the defendant hired another person to carry out that intent. The state alleges that the defendant hired <insert name of other person>.

### Element 3 - Started or caused fire or explosion<sup>2</sup>

The third element is that <insert name of other person> started a fire or caused an explosion. To "start" means to commence. To "cause an act to be done" is to bring it about. The fire started need not be a tremendous one. The mere striking of a match can be the start of a fire. The fire or explosion must be incendiary in origin. That is, it must not be accidental or caused by carelessness. In considering whether the fire or explosion was incendiary in origin, you may rely upon all the facts and circumstances at the time and place of the fire or explosion, as you find them to have been proved, and may draw any reasonable or logical inferences from such facts. The mere fact that there was fire or explosion damage to a building does not create an inference that its origin was incendiary.

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant intended to destroy or damage <identify the building>, 2) the defendant hired <insert name of other person>, and 3) <insert name of other person> started the fire or caused the explosion.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of arson in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Dubose*, 75 Conn. App. 163, 174-75, cert. denied, 263 Conn. 909 (2003).

<sup>2</sup> *State v. Houle*, 105 Conn. App. 813, 818 n.4 (2008) (on the meaning of incendiary); *State v. Gaines*, 36 Conn. App. 454, 458-59 (1995) (on the meaning of "causing a fire").

### ***Commentary***

Arson for hire is complete when the defendant solicits another to set fire to a building. *State v. Servello*, 59 Conn. App. 362, 370, cert. denied, 254 Conn. 940 (2000) (describing the elements of attempt to commit arson in the second degree and reviewing the legislative history of this section).

## 9.3-4 Arson in the Third degree -- § 53a-113

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with arson in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of arson in the third degree when (he/she) recklessly causes destruction or damage to a building of (his/her) own or of another by intentionally starting a fire or causing an explosion.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Started or caused fire or explosion<sup>1</sup>**

The first element is that the defendant intentionally started or caused a fire or explosion. <See *Intent: General, Instruction 2.3-1.*>

To "start" means to commence. To "cause an act to be done" is to bring it about. The fire started need not be a tremendous one. The mere striking of a match can be the start of a fire. The fire or explosion must be incendiary in origin. That is, it must not be accidental or caused by carelessness. In considering whether the fire or explosion was incendiary in origin, you may rely upon all the facts and circumstances at the time and place of the fire or explosion, as you find them to have been proved, and may draw any reasonable or logical inferences from such facts. The mere fact that there was fire or explosion damage to a building does not create an inference that its origin was incendiary.

### **Element 2 - Recklessly**

The second element is that (he/she) recklessly caused destruction or damage to a building. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

The state must prove that the defendant caused destruction or damage to (his/her) own building or the building of another. "Damage" is injury that lowers the value of the building or that impairs its usefulness. There must be some damage to the building, regardless of how slight.

Ordinarily, "building" implies a structure that may be entered and used by people, as a residence or for business, or for other purposes involving occupancy by people, whether or not it is actually entered and used as such. <Insert one or both of the following parts of the definition as appropriate:>

- The law has expanded this definition to include, in addition to what we ordinarily know as a building, any watercraft, aircraft, trailer, sleeping car, railroad car, other structure or vehicle or any building with a valid certificate of occupancy.
- The statutory definition also provides that where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not

occupied by the defendant is, in addition to being a part of such building, a separate building.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant started a fire or caused an explosion, 2) that fire or explosion caused destruction or damage to <*identify the building*>, and 3) that in doing so, the defendant acted recklessly.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of arson in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Houle*, 105 Conn. App. 813, 818 n.4 (2008) (on the meaning of incendiary); *State v. Gaines*, 36 Conn. App. 454, 458-59 (1995) (on the meaning of "causing a fire").

## 9.3-5 Reckless Burning -- § 53a-114

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with reckless burning. The statute defining this offense reads in pertinent part as follows:

a person is guilty of reckless burning when (he/she) intentionally starts a fire or causes an explosion, whether on (his/her) own property or another's, and thereby recklessly places a building of another in danger of destruction or damage.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Started or caused fire or explosion<sup>1</sup>**

The first element is that the defendant intentionally started a fire or caused an explosion. <See *Intent: General, Instruction 2.3-1.*>

To "start" means to commence. To "cause an act to be done" is to bring it about. The fire started need not be a tremendous one. The mere striking of a match can be the start of a fire. The fire or explosion must be incendiary in origin. That is, it must not be accidental or caused by carelessness. In considering whether the fire or explosion was incendiary in origin, you may rely upon all the facts and circumstances at the time and place of the fire or explosion, as you find them to have been proved, and may draw any reasonable or logical inferences from such facts as to whether the defendant acted with the necessary intent. The mere fact that there was fire or explosion damage to a building does not create an inference that its origin was incendiary.

### **Element 2 - On property**

The second element is that the defendant started the fire or caused the explosion on any property belonging to (himself/herself) or another person. It is not necessary that the state prove that the defendant owned the property.

### **Element 3 - Recklessly endangered building**

The third element is that the defendant recklessly placed a building of another in danger of destruction or damage. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

Ordinarily, "building" implies a structure that may be entered and used by people, as a residence or for business, or for other purposes involving occupancy by people, whether or not it is actually entered and used as such. <Insert one or both of the following parts of the definition as appropriate:>

- The law has expanded this definition to include, in addition to what we ordinarily know as a building, any watercraft, aircraft, trailer, sleeping car, railroad car, other structure or vehicle or any building with a valid certificate of occupancy.
- The statutory definition also provides that where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not

occupied by the defendant is, in addition to being a part of such building, a separate building.

Actual damage to a building of another is not required. The offense merely requires that the building be placed in danger of destruction or damage. It is not necessary that the state prove ownership of the property on which the fire was started or the explosion was caused, but the state must, however, prove that the building exposed to damage or destruction was owned by a person other than the defendant. The fire can be started on any property, but the property endangered must qualify as a building under the statutory definition previously provided.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant started a fire or caused an explosion, 2) the fire or explosion occurred on anyone's property, and 3) by doing so, the defendant recklessly placed a building of another in danger of destruction or damage.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of reckless burning, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Houle*, 105 Conn. App. 813, 818 n.4 (2008) (on the meaning of incendiary); *State v. Gaines*, 36 Conn. App. 454, 458-59 (1995) (on the meaning of "causing a fire").

## **9.4 CRIMINAL TRESPASS**

**9.4-1 Criminal Trespass in the First Degree -- §  
53a-107 (a) (1) and (4)**

**9.4-2 Criminal Trespass in the First Degree -- §  
53a-107 (a) (2) and (3)**

**9.4-3 Criminal Trespass in the Second Degree --  
§ 53a-108**

**9.4-4 Criminal Trespass in the Third Degree -- §  
53a-109**

**9.4-5 Affirmative Defenses to Criminal Trespass  
-- § 53a-110**

## 9.4-1 Criminal Trespass in the First Degree -- § 53a-107 (a) (1) and (4)

Revised to December 1, 2007

**Note: Subsection (a) (1) concerns buildings and other premises and subsection (a) (4) concerns public land. Tailor the instruction accordingly.**

The defendant is charged [in count \_\_\_] with criminal trespass in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal trespass in the first degree when, knowing that such person is not licensed or privileged to do so, such person (enters / remains)<sup>1</sup> (in a building or any other premises / on public land) after an order (to leave / not to enter) personally communicated to such person by (the owner of the premises or other authorized person / an authorized official of the state or municipality, as the case may be).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Entered or remained**

The first element is that the defendant (entered / remained) (in a building or any other premises / on public land).

[<If trespass to a building is alleged:> Ordinarily, "building" implies a structure that may be entered and used by human beings, as a residence or for business, or for other purposes involving occupancy by people, whether or not it is actually entered and used as such. <Insert one or both of the following parts of the definition as appropriate:>

- The law has expanded this definition to include, in addition to what we ordinarily know as a building, any watercraft, aircraft, trailer, sleeping car, railroad car, other structure or vehicle or any building with a valid certificate of occupancy.
- The statutory definition also provides that where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not occupied by the defendant is, in addition to being a part of such building, a separate building. In other words, any one of these separate units, separately secured or occupied, when intruded upon, may be considered a "building," plus the whole building is considered a "building" for purposes of any unlawful intrusion into any part of it.]

You must also determine whether the defendant unlawfully (entered / remained) (in the building / on public land). A person unlawfully (enters / remains) (in a building / on public land) when (he/she) is not licensed or privileged to do so. To be "licensed or privileged," the defendant must either have consent from (the owner of the premises or other authorized person / an authorized official of the state or municipality) or have some other right to be (in the building / on the land).

[To "enter" a building the intruder need not necessarily place (his/her) entire body inside the building. Inserting any part of (his/her) body, or an implement or weapon held by (him/her), within the building is sufficient to constitute an entry as long as it is without license or privilege. It does not matter how an intruder may actually have entered; if (he/she) did so without license or privilege, (he/she) has entered unlawfully.]

[A person may have entered the (building / public land) lawfully, that is, (he/she) had the right or had been given permission, but that right is terminated or the permission withdrawn by someone who had a right to terminate or withdraw it. You may find that the defendant "unlawfully remained" (in the building / on the land) under these circumstances.]

### **Element 2 - With knowledge**

The second element is that the defendant knew that (he/she) was not privileged to do so. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Element 3 - After order**

The third element is that the defendant had been ordered (to leave / not to enter), and the order had been personally communicated to the defendant by (the owner or other authorized person / an authorized official of the state or municipality).<sup>2</sup>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (entered / remained) (in / on) <identify the building or land>, 2) (he/she) knew that (he/she) was not licensed or privileged to do so, and 3) an order to not (enter / remain) (in / on) <identify the building or land> had been personally communicated to (him/her) by <identify authorized person>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal trespass in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Do not instruct on both "unlawful entering" and "unlawful remaining" if the information and the evidence could support a conceptual distinction between the two. See the commentary to "enters or remains unlawfully" in the glossary.

<sup>2</sup> *State v. Vlasak*, 52 Conn. App. 310, 316-17, appeal dismissed, 252 Conn. 228 (2000) (authorized person may transfer authority to police); *State v. LoSacco*, 12 Conn. App. 172, 174-75 (1987) (no evidence that authority had been transferred to police).

### **Commentary**

This statute protects any possessor of land, whether titleholder or not, from intrusions by unwanted persons. *State v. Delgado*, 19 Conn. App. 245, 254 (1989).

A tenant cannot be considered an "owner" with respect to an order to leave the premises for purposes of § 53a-107 unless the record reveals that the owner or an agent of the landlord conferred authority on the tenant, thereby permitting the tenant to prevent someone from being on the premises. *State v. Bell*, 55 Conn. App. 475, 486, cert. denied, 252 Conn. 908 (1999), overruled on other grounds, *State v. Moulton*, 310 Conn. 337, 356 (2014).

## 9.4-2 Criminal Trespass in the First Degree -- § 53a-107 (a) (2) and (3)

Revised to November 17, 2015

**Note:** Subsection (a) (2) concerns restraining orders and protective orders issued by a Connecticut court and subsection (a) (3) concerns foreign orders of protection. Tailor the instruction accordingly.

The defendant is charged [in count \_\_\_] with criminal trespass in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal trespass in the first degree when such person (enters / remains in)<sup>1</sup> a building or any other premises in violation of a (restraining order / protective order / foreign order of protection).<sup>2</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Entered or remained**

The first element is that the defendant (entered / remained in) a building or other premises.

*<Include only as much of the statutory definition that is supported by the allegations in the information and the evidence in the case:>* "Building" in addition to its ordinary meaning, includes any watercraft, aircraft, trailer, sleeping car, railroad car, other structure or vehicle or any building with a valid certificate of occupancy. Where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not occupied by the defendant is, in addition to being part of such building, a separate building.

[To "enter" a building the intruder need not necessarily place (his/her) entire body inside the building. Inserting any part of (his/her) body, or an implement or weapon held by (him/her), within the building is sufficient to constitute an entry.]

### **Element 2 - Order**

The second element is that the defendant, by (entering / remaining in) *<identify building>*, was in violation of a (restraining order / a protective order / foreign order of protection).

*<See Criminal Violation of Protective Order, Instruction 6.8-1, and Criminal Violation of a Restraining Order, Instruction 6.8-3.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (entered / remained in) *<identify premises>*, and 2) this was in violation of a (restraining order / protective order / foreign order of protection).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal trespass in the first degree, then you shall find the defendant guilty. On

the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Do not instruct on both "unlawful entering" and "unlawful remaining" if the information and the evidence could support a conceptual distinction between the two. See the commentary to "enters or remains unlawfully" in the glossary.

<sup>2</sup> A restraining order issued pursuant to § 46b-15; a protective order issued pursuant to §§ 46b-38c, 54-1k, or 54-82r; foreign order of protection as defined by § 46b-15a. If the violation is charged in a separate count, you may simply refer the jury to the instructions on that count.

### ***Commentary***

In *State v. Bell*, 55 Conn. App. 475, 485, cert. denied, 252 Conn. 908 (1999), overruled on other grounds, *State v. Moulton*, 310 Conn. 337, 356 (2014), the court order prohibited the defendant from entering the building, so he could not be prosecuted for being on the premises outside the building.

The validity of the underlying order cannot be challenged in a prosecution under this statute. See *State v. Wright*, 273 Conn. 418 (2005) (validity of underlying order not an element of violation of a protective order).

It is not a violation of double jeopardy to be convicted of both criminal trespass and violation of a protective order. *State v. Quint*, 97 Conn. App. 72, 80-83, cert. denied, 280 Conn. 924 (2006).

## 9.4-3 Criminal Trespass in the Second Degree -- § 53a-108

Revised to December 1, 2007

**Note: Subsection (a) (1) concerns buildings and other premises and subsection (a) (4) concerns public land. Tailor the instruction accordingly.**

The defendant is charged [in count \_\_\_] with criminal trespass in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal trespass in the second degree when, knowing that (he/she) is not licensed or privileged to do so, (he/she) (enters / remains)<sup>1</sup> (in a building / on public land).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Entered or remained**

The first element is that the defendant (entered / remained) (in a building / on public land).

[<If trespass to a building is alleged:> Ordinarily, "building" implies a structure that may be entered and used by human beings, as a residence or for business, or for other purposes involving occupancy by people, whether or not it is actually entered and used as such. <Insert one or both of the following parts of the definition as appropriate:>

- The law has expanded this definition to include, in addition to what we ordinarily know as a building, any watercraft, aircraft, trailer, sleeping car, railroad car, other structure or vehicle or any building with a valid certificate of occupancy.
- The statutory definition also provides that where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not occupied by the defendant is, in addition to being a part of such building, a separate building. In other words, any one of these separate units, separately secured or occupied, when intruded upon, may be considered a "building," plus the whole building is considered a "building" for purposes of any unlawful intrusion into any part of it.]

You must also determine whether the defendant unlawfully (entered / remained) (in the building / on public land). A person unlawfully (enters / remains) (in a building / on public land) when (he/she) is not licensed or privileged to do so. To be "licensed or privileged," the defendant must either have consent from the person in possession of the (building / land) or have some other right to be (in the building / on the land).

[To "enter" a building the intruder need not necessarily place (his/her) entire body inside the building. Inserting any part of (his/her) body, or an implement or weapon held by (him/her), within the building is sufficient to constitute an entry as long as it is without license or privilege. It does not matter how an intruder may actually have entered; if (he/she) did so without license or privilege, (he/she) has entered unlawfully.]

[A person may have entered the (building / public land) lawfully, that is, (he/she) had the right or had been given permission, but that right is terminated or the permission withdrawn by someone who had a right to terminate or withdraw it. You may find that the defendant "unlawfully remained" (in the building / on the land) under these circumstances.]

### **Element 2 - With knowledge**

The second element is that the defendant knew that (he/she) was not licensed or privileged to do so. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (entered / remained) (in / on) <identify the building or public land>, and 2) (he/she) knew that (he/she) was not licensed or privileged to do so.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal trespass in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Do not instruct on both "unlawful entering" and "unlawful remaining" if the information and the evidence could support a conceptual distinction between the two. See the commentary to "enters or remains unlawfully" in the glossary.

### ***Commentary***

Criminal trespass in the second degree is a lesser included offense of burglary in the second degree with a firearm. *State v. White*, 97 Conn. App. 763, 779, cert. denied, 280 Conn. 939 (2006).

## 9.4-4 Criminal Trespass in the Third Degree -- § 53a-109

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with criminal trespass in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal trespass in the third degree when, knowing that (he/she) is not licensed or privileged to do so, (he/she) *<insert appropriate subsection:>*

- **§ 53a-109 (a) (1):** (enters / remains in) premises which are
  - posted in a manner prescribed by law or reasonably likely to come to the attention of intruders.
  - fenced or otherwise enclosed in a manner designed to exclude intruders.
  - belong to the state and are appurtenant to any state institution.
- **§ 53a-109 (a) (2):** (enters / remains in) any premises for the purpose of hunting, trapping or fishing.
- **§ 53a-109 (a) (3):** (enters / remains on) public land which is
  - posted in a manner prescribed by law or reasonably likely to come to the attention of intruders.
  - fenced or otherwise enclosed in a manner designed to exclude intruders.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Entered or remained<sup>1</sup>**

The first element is that the defendant *<insert as appropriate:>*

- **§ 53a-109 (a) (1):** (entered / remained in) premises which are
  - posted in a manner prescribed by law or reasonably likely to come to the attention of intruders.
  - fenced or otherwise enclosed in a manner designed to exclude intruders.
  - belong to the state and are appurtenant to any state institution.
- **§ 53a-109 (a) (2):** (entered / remained in) any premises for the purpose of hunting, trapping or fishing.
- **§ 53a-109 (a) (3):** (entered / remained on) public land which is
  - posted in a manner prescribed by law or reasonably likely to come to the attention of intruders.
  - fenced or otherwise enclosed in a manner designed to exclude intruders.

You must also determine whether the defendant unlawfully (entered / remained on) the (premises / public land). A person unlawfully (enters / remains on) (premises / public land) when (he/she) is not licensed or privileged to do so. To be "licensed or privileged," the defendant must either have consent from the person in possession of the (premises / public land) or have some other right to be on the (premises / public land).

[A person may have entered the (premises / public land) lawfully, that is, (he/she) had the right or had been given permission, but that right is terminated or the permission withdrawn by

someone who had a right to terminate or withdraw it. You may find that the defendant "unlawfully remained" on the (premises / the land) under these circumstances.]

### **Element 2 - With knowledge**

The second element is that the defendant knew that (he/she) was not licensed or privileged to do so. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (entered / remained on) <identify the premises or public land>, and 2) (he/she) knew that (he/she) was not licensed or privileged to do so.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal trespass in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Do not instruct on both "unlawful entering" and "unlawful remaining" if the information and the evidence could support a conceptual distinction between the two. See the commentary to "enters or remains unlawfully" in the glossary.

### ***Commentary***

See generally *State v. Ward*, 83 Conn. App. 377, 395-98, cert. denied, 271 Conn. 902 (2004). "Trespass involves an intrusion upon another's interest in the exclusive possession of land." *State v. Martin*, 35 Conn. Sup. 555, 557 (1978) ("owner" does not mean title holder, but possessor). Opening property to the public does not alter its character as private property. The possessor of private property has "a right to determine whom to invite, the scope of the invitation and the circumstances under which the invitation was to be revoked." *Id.*, 560. "[T]he statute does not demand that premises be completely enclosed to fall within its purview, but they must be enclosed sufficiently to exclude intruders, namely, those who purposefully enter the property despite having no legitimate reason to do so." *State v. Robinson*, 105 Conn. App. 179, 194, aff'd, 290 Conn. 381 (2009).

## 9.4-5 Affirmative Defenses to Criminal Trespass -- § 53a-110

Revised to December 1, 2007

The defendant has raised an affirmative defense to the charge of criminal trespass. The state has the burden of proving beyond a reasonable doubt each of the elements of criminal trespass in the (first / second / third) degree. If you are satisfied that the state has proved these elements beyond a reasonable doubt, you must still consider whether the defendant has proved (his/her) affirmative defense.

*<Insert Affirmative Defense, Instruction 2.9-1.>*

### **A. If claiming defense under § 53a-110 (a) (1)**

The defendant claims that the building involved in the offense was abandoned. The word "abandon," as used in the statute, has a meaning in law that is not entirely the same as in everyday speech. It is not enough to show as a defense that the building was vacant or unoccupied or uncared for. To prove abandonment the defendant must convince you, by a preponderance of the evidence, that the owner had totally withdrawn from the building, had laid aside all care for it, and had left it altogether to itself, voluntarily relinquishing possession of it with the intention of terminating ownership, but without vesting it in any other person.<sup>1</sup>

### **B. If claiming defense under § 53a-110 (a) (2)**

The defendant claims that the premises, at the time of the (entry / remaining), were open to the public and the defendant complied with all lawful conditions imposed on (access to / remaining on) the premises.

### **C. If claiming defense under § 53a-110 (a) (3)**

The defendant claims that (he/she) reasonably believed that the owner of the premises, or a person empowered to license a person to access the building, would have licensed (him/her) to (enter / remain), or that (he/she) was licensed to do so. A reasonable belief means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

### **Conclusion**

*<Substitute for the concluding paragraph in the offense instruction.>* If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of criminal trespass in the (first / second / third) degree, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal trespass in the (first / second / third) degree, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved by a preponderance of the evidence that *<insert affirmative defense>*, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

---

<sup>1</sup> Black's Law Dictionary (8th Ed. 2004).

## **9.5 CRIMINAL MISCHIEF AND MISCELLANEOUS PROPERTY CRIMES**

**9.5-1 Criminal Mischief in the First Degree -- § 53a-115 (a) (1) and (5)**

**9.5-2 Criminal Mischief in the First Degree -- § 53a-115 (a) (2)**

**9.5-3 Criminal Mischief in the First Degree -- § 53a-115 (a) (3)**

**9.5-4 Criminal Mischief in the First Degree -- § 53a-115 (a) (4)**

**9.5-5 Criminal Mischief in the Second Degree -- § 53a-116 (a) (1) and (3)**

**9.5-6 Criminal Mischief in the Second Degree -- § 53a-116 (a) (2)**

**9.5-7 Criminal Mischief in the Third Degree -- § 53a-117 (a) (1)**

**9.5-8 Criminal Mischief in the Third Degree -- § 53a-117 (a) (2)**

**9.5-9 Criminal Mischief in the Fourth Degree -- § 53a-117a (a) (1)**

**9.5-10 Criminal Mischief in the Fourth Degree -- § 53a-117a (a) (2)**

**9.5-11 Criminal Damage of a Landlord's  
Property -- § 53a-117e, § 53a-117f, and §  
53a-117g**

**9.5-12 Criminal Trover in the First Degree -- §  
53a-126a**

**9.5-13 Criminal Trover in the Second Degree -- §  
53a-126b**

## 9.5-1 Criminal Mischief in the First Degree -- § 53a-115 (a) (1) and (5)

Revised to December 1, 2007

**Note: Subsection (a) (1) concerns privately owned land and subsection (a) (5) concerns public land. Tailor the instruction accordingly.**

The defendant is charged [in count \_\_\_] with criminal mischief in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal mischief in the first degree when with intent to cause damage to tangible property (of another / owned by the state or a municipality that is located on public land) and having no reasonable ground to believe that such person has a right to do so, such person damages tangible property of another in an amount exceeding one thousand five hundred dollars.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Damaged property**

The first element is that the defendant damaged tangible property (of another / owned by the state or a municipality that is located on public land). "Tangible" means that the property is something that can be felt and seen. The statute is concerned with actual, physical damage to property.

[<Insert as appropriate:> This "other person" need not have had a complete, absolute, or exclusive right to the property. It is enough if (he/she) had a right to possess it or shared some such right with someone else.]

### **Element 2 - Property value**

The second element is that the defendant caused damage to this property in an amount exceeding \$1,500; that is, the value of the property was lowered by at least that amount. The decrease in value may be proved by evidence showing the cost of repairs necessary to restore the property to its condition immediately before the alleged damage by the defendant. Damage may also be proved by evidence showing a property value decrease in excess of \$1,500.

### **Element 3 - Intent**

The third element is that the defendant intentionally caused this damage. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Element 4 - No right**

The fourth element is that the defendant had no reasonable ground to believe that (he/she) had a right to damage the property. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant damaged tangible property (of another / owned by the state or a municipality that is located on public land), 2) the damage was in excess of \$1,500, 3) (he/she) did so with the specific intent to cause the damage, and 4) (he/she) had no reasonable ground to believe that (he/she) had a right to damage the property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal mischief in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.5-2 Criminal Mischief in the First Degree -- § 53a-115 (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal mischief in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal mischief in the first degree when with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that such person has a right to do so, such person damages or tampers with tangible property of a (utility / mode of public transportation, power or communication), and thereby causes an interruption or impairment of service rendered to the public.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Damaged or tampered with property**

The first element is that the defendant damaged or tampered with tangible property of a (utility / mode of public transportation, power or communication). "Tangible" means that the property is something that can be felt and seen. To "damage" means to harm. To "tamper with" means to physically interfere with the property.

### **Element 2 - Caused interruption or impairment**

The second element is that the defendant caused an interruption or impairment of service to the public. To cause means to bring about or to be a substantial factor, from which the interruption or impairment of service follows as a natural, direct and immediate consequence. The terms "interruption" and "impairment" should be given their ordinary meanings.

### **Element 3 - Intent**

The third element is that the defendant intended to cause an interruption or impairment of a service that <insert name of complainant> renders to the public. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Element 4 - No right**

The fourth element is that the defendant had no reasonable ground to believe that (he/she) had a right to damage or tamper with the property. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant damaged or tampered with the tangible property of a (utility / mode of public transportation, power or communication), 2) this resulted in the interruption or impairment of service to the public, 3) the

defendant specifically intended to cause this interruption or impairment, and 4) (he/she) had no reasonable ground to believe that (he/she) had a right to damage or tamper with the property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal mischief in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.5-3 Criminal Mischief in the First Degree -- § 53a-115 (a) (3)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal mischief in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal mischief in the first degree when with intent to cause damage to any electronic monitoring equipment owned or leased by the state or its agent and required as a condition of (probation / conditional discharge / release / community release)<sup>1</sup> and having no reasonable ground to believe that such person has a right to do so, such person damages such electronic monitoring equipment and thereby causes an interruption in its ability to function.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Damaged property**

The first element is that the defendant damaged electronic monitoring equipment owned or leased by the state or its agent and required as a condition of (probation / conditional discharge / release / community release).

### **Element 2 - Caused interruption**

The second element is that the defendant caused an interruption in the functioning of the electronic monitoring equipment. To cause means to bring about or to be a substantial factor, from which the interruption follows as a natural, direct and immediate consequence. The term "interruption" should be given its ordinary meaning.

### **Element 3 - Intent**

The third element is that the defendant intended to damage the electronic monitoring equipment. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 4 - No right**

The fourth element is that the defendant had no reasonable ground to believe that (he/she) had a right to damage the property. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant damaged electronic monitoring equipment owned or leased by the state or its agent and required as a condition of (probation / conditional discharge / release / community release), 2) this damage caused an interruption in the functioning of the electronic monitoring equipment, 3) the defendant specifically intended to cause this interruption, and 4) (he/she) had no reasonable ground to believe that (he/she) had a right to damage the property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal mischief in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> For probation or conditional discharge, see § 53a-30; for release, see § 54-64a; for community release, see § 18-100c.

## 9.5-4 Criminal Mischief in the First Degree -- § 53a-115 (a) (4)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal mischief in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal mischief in the first degree when with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that such person has a right to do so, such person damages or tampers with *<insert as appropriate:>*

- any tangible property owned by the state, a municipality or a person for fire alarm or police alarm purposes.
- any telecommunication system operated by the state police or a municipal police department.
- any emergency medical or fire service dispatching system.
- any fire suppression equipment owned by the state, a municipality, a person or a fire district.
- any fire hydrant or hydrant system owned by the state or a municipality, a person, fire district or private water company.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Damaged or tampered with property

The first element is that the defendant damaged or tampered with *<insert as appropriate:>*

- tangible property owned by the state, a municipality or a person for fire alarm or police alarm purposes.
- a telecommunication system operated by the state police or a municipal police department.
- an emergency medical or fire service dispatching system.
- fire suppression equipment owned by the state, a municipality, a person or a fire district.
- a fire hydrant or hydrant system owned by the state or a municipality, a person, fire district or private water company.

To "damage" means to cause harm to the property. To "tamper with" means to physically interfere with.

### Element 2 - Intent

The second element is that the defendant intended to cause an interruption or impairment of service rendered to the public. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### Element 3 - No right

The third element is that the defendant had no reasonable ground to believe that (he/she) had a right to damage or tamper with the property. A "reasonable ground to believe" means that a

reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant damaged or tampered with <identify property>, 2) (he/she) intended to cause interruption or impairment of service rendered to the public, and 3) (he/she) had no reasonable ground to believe that (he/she) had a right to damage or tamper with the property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal mischief in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.5-5 Criminal Mischief in the Second Degree -- § 53a-116 (a) (1) and (3)

Revised to December 1, 2007

**Note: Subsection (a) (1) concerns privately owned land and subsection (a) (3) concerns public land. Tailor the instruction accordingly.**

The defendant is charged [in count \_\_\_] with criminal mischief in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal mischief in the second degree when with intent to cause damage to tangible property (of another / owned by the state or a municipality that is located on public land) and having no reasonable ground to believe that such person has a right to do so, such person damages tangible property of another in an amount exceeding two hundred fifty dollars.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Damaged property**

The first element is that the defendant damaged tangible property (of another / owned by the state or a municipality that is located on public land). "Tangible" means that the property is something that can be felt and seen. The statute is concerned with actual, physical damage to property.

[<Insert if applicable:> This "other person" need not have had a complete, absolute, or exclusive right to the property. It is enough if (he/she) had a right to possess it or shared some such right with someone else.]

### **Element 2 - Property value**

The second element is that the defendant caused damage to this property in an amount exceeding \$250; that is, the value of the property was lowered by at least that amount. The decrease in value may be proved by evidence showing the cost of repairs necessary to restore the property to its condition immediately before the alleged damage by the defendant. Damage may also be proved by evidence showing a property value decrease in excess of \$250.

### **Element 3 - Intent**

The third element is that the defendant intentionally caused this damage. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Element 4 - No right**

The fourth element is that the defendant had no reasonable ground to believe that (he/she) had a right to damage the property. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant damaged tangible property (of another / owned by the state or a municipality that is located on public land), 2) the damage was in excess of \$250, 3) (he/she) did so with the specific intent to cause the damage, and 4) (he/she) had no reasonable ground to believe that (he/she) had a right to damage the property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal mischief in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.5-6 Criminal Mischief in the Second Degree -- § 53a-116 (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal mischief in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal mischief in the second degree when with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that such person has a right to do so, such person damages or tampers with tangible property of a (public utility / mode of public transportation, power or communication), and thereby causes a risk of interruption or impairment of service rendered to the public.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Damaged or tampered with property**

The first element is that the defendant damaged or tampered with tangible property of a (utility / mode of public transportation, power or communication). "Tangible" means that the property is something that can be felt and seen. To "damage" means to harm. To "tamper with" means to physically interfere with.

### **Element 2 - Caused risk of interruption or impairment**

The second element is that the defendant caused a risk of an interruption or impairment of service to the public. To cause means to bring about or to be a substantial factor, from which the interruption or impairment of service follows as a natural, direct and immediate consequence. The terms "interruption" and "impairment" should be given their ordinary meanings.

### **Element 3 - Intent**

The third element is that the defendant intended to cause an interruption or impairment of a service that <insert name of complainant> renders to the public. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Element 4 - No right**

The fourth element is that the defendant had no reasonable ground to believe that (he/she) had a right to damage or tamper with the property. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant damaged or tampered with tangible property of a (utility / mode of public transportation, power or communication), 2) this resulted in the risk of an interruption or impairment of service to the public, 3) the defendant specifically intended to cause this interruption or impairment, and 4)

(he/she) had no reasonable ground to believe that (he/she) had a right to damage or tamper with the property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal mischief in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.5-7 Criminal Mischief in the Third Degree -- § 53a-117 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal mischief in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal mischief in the third degree when, having no reasonable ground to believe that such person has a right to do so, such person (intentionally / recklessly) *<insert as appropriate:>*

- damages tangible property of another.
- tampers with tangible property of another and thereby causes such property to be placed in danger of damage.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Damaged or tampered with property

The first element is that the defendant *<insert as appropriate:>*

- damaged tangible property of another.
- tampered with tangible property of another and thereby placed the property in danger of damage.

"Tangible" means that the property is something that can be felt and seen. To "damage" means to harm the property. To "tamper with" means to physically interfere with.

[*<Insert if applicable:>* This "other person" need not have had a complete, absolute, or exclusive right to the property. It is enough if (he/she) had a right to possess it or shared some such right with someone else.]

### Element 2 - Intentionally / Recklessly

The second element is that the defendant acted (intentionally / recklessly)<sup>1</sup> in damaging or tampering with the property. *<Insert as appropriate:>*

- A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*
- A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<See Recklessness, Instruction 2.3-4.>*

### Element 3 - No right

The third element is that the defendant had no reasonable ground to believe that (he/she) had a right to damage or tamper with the property. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (damaged property / tampered with property causing a risk that it would be damaged), 2) (he/she) did so (intentionally / recklessly), and 3) (he/she) had no reasonable ground to believe that (he/she) had a right to damage or tamper with the property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal mischief in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If both intentional and reckless are charged in the alternative, instruct the jury that it must be unanimous as to which of the alternatives applies.

## 9.5-8 Criminal Mischief in the Third Degree -- § 53a-117 (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal mischief in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal mischief in the third degree when, having no reasonable ground to believe that (he/she) has a right to do so, (he/she) damages tangible property of another by negligence involving the use of any potentially harmful or destructive force or substance, such as, but not limited to, fire, explosives, flood, avalanche, collapse of building, poison gas or radioactive material.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Damaged property**

The first element is that the defendant damaged tangible property of another. "Tangible" means that the property is something that can be felt and seen. The statute is concerned with actual, physical damage to property.

[<Insert if applicable:> This "other person" need not have had a complete, absolute, or exclusive right to the property. It is enough if (he/she) had a right to possess it or shared some such right with someone else.]

### **Element 2 - Negligence**

The second element is that the damage to the property was caused by the defendant's negligence involving the use of a potentially harmful force or substance. <Describe specific allegations.>

Common-law negligence is the failure to use reasonable care under the circumstances. Reasonable care is the care that a reasonably prudent person would use in the same circumstances. Thus, negligence is doing something that a reasonably prudent person would not do under the circumstances, or failing to do what a reasonably prudent person would do under the circumstances. The use of proper care in a given situation is the care that an ordinarily prudent person would use in view of the surrounding circumstances. In determining the care that a reasonably prudent person would use in the same circumstances, you should consider all of the circumstances which were known or should have been known to the defendant at the time of the conduct in question. Whether care is reasonable depends upon the dangers that a reasonable person would perceive in those circumstances. It is common sense that the more dangerous the circumstances, the greater the care that ought to be exercised.

Before determining whether the defendant used reasonable care, you must determine whether the defendant owed another person a duty of care. The test of the existence of a duty to use reasonable care is to be found in the foreseeability that harm of the general nature as that which occurred may result if that care is not exercised. Therefore, the state must prove beyond a reasonable doubt that the defendant, in view of the circumstances as (he/she) knew them or in the

reasonable exercise of (his/her) faculties should have known them, should have reasonably anticipated that unless (he/she) used reasonable care, harm of the same general nature as that which did occur would or could occur.

### **Element 3 - No right**

The third element is that the defendant had no reasonable ground to believe that (he/she) had a right to damage the property. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant damaged the tangible property of another, 2) the damage was caused by the defendant's negligence involving the use of any potentially harmful or destructive force or substance, specifically *<insert specific allegations>*, and 3) (he/she) had no reasonable ground to believe that (he/she) had a right to damage the property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal mischief in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 9.5-9 Criminal Mischief in the Fourth Degree -- § 53a-117a (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal mischief in the fourth degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal mischief in the fourth degree when, having no reasonable ground to believe (he/she) has a right to do so, (he/she) (intentionally / recklessly) damages or tampers with any fire hydrant or hydrant system owned by (the state / a municipality / a fire district / a private water company).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Damaged or tampered with fire hydrant**

The first element is that the defendant damaged or tampered with a fire hydrant or hydrant system owned by (the state / a municipality / a fire district / a private water company). To "damage" means to cause harm to the property. To "tamper with" means to physically interfere with.

### **Element 2 - Intentionally / Recklessly**

The second element is that the defendant acted (intentionally / recklessly)<sup>1</sup> in damaging or tampering with the fire hydrant or hydrant system. *<Insert as appropriate:>*

- A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*
- A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<See Recklessness, Instruction 2.3-4.>*

### **Element 3 - No right**

The third element is that the defendant had no reasonable ground to believe that (he/she) had a right to damage or tamper with the fire hydrant or hydrant system. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant damaged or tampered with a fire hydrant or hydrant system, 2) (he/she) did so (intentionally / recklessly), and 3) (he/she) had no reasonable ground to believe that (he/she) had a right to damage or tamper with the fire hydrant or hydrant system.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal mischief in the fourth degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If both intentional and reckless are charged in the alternative, instruct the jury that it must be unanimous as to which of the alternatives applies.

## 9.5-10 Criminal Mischief in the Fourth Degree -- § 53a-117a (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal mischief in the fourth degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal mischief in the fourth degree when, having no reasonable ground to believe (he/she) has a right to do so, (he/she) (intentionally / recklessly) (damages / tampers with / removes) any tangible property owned by (the state / a municipality / a person) for fire alarm, smoke detection and alarm, fire suppressant or police alarm purposes.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Damaged, tampered with or removed property**

The first element is that the defendant (damaged / tampered with / removed) tangible property owned by the (the state / a municipality / a person) for fire alarm, smoke detection and alarm, fire suppressant or police alarm purposes. "Tangible" means capable of being felt and seen.

<Insert definitions as appropriate:>

- To "damage" means to cause harm to the property.
- To "tamper with" means to physically interfere with.

### **Element 2 - Intentionally / Recklessly**

The second element is that the defendant acted (intentionally / recklessly)<sup>1</sup> in (damaging / tampering with / removing) the property. <Insert as appropriate:>

- A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>
- A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

### **Element 3 - No right**

The third element is that the defendant had no reasonable ground to believe that (he/she) had a right to (damage / tamper with / remove) the property. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (damaged / tampered with / removed) the tangible property of (the state / a municipality / a person) for fire alarm, smoke detection and alarm, fire suppressant or police alarm purposes, 2) (he/she) did so (intentionally / recklessly), and 3) (he/she) had no reasonable ground to believe that (he/she) had a right to (damage / tamper with / remove) the property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal mischief in the fourth degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If both intentional and reckless are charged in the alternative, instruct the jury that it must be unanimous as to which of the alternatives applies.

## **9.5-11 Criminal Damage of a Landlord's Property -- § 53a-117e, § 53a-117f, and § 53a-117g**

Revised to December 1, 2007

**Note: First, second and third degree differ as to mens rea and the amount of the resulting damage. First degree, § 53a-117e, requires intentional conduct and damage exceeding \$1,500. Second degree, § 53a-117f, requires either intentional conduct and damage exceeding \$250, or reckless conduct and damage exceeding \$1,500. Third degree, § 53a-117g, requires reckless conduct and damage exceeding \$250.**

The defendant is charged [in count \_\_\_] with criminal damage of a landlord's property in the (first / second / third) degree. The statute defining this offense reads in pertinent part as follows:

a tenant is guilty of criminal damage of a landlord's property in the (first / second / third) degree when, having no reasonable ground to believe that (he/she) has a right to do so, (he/she) (intentionally / recklessly) damages the tangible property of the landlord of the premises in an amount exceeding (one thousand five hundred / two hundred fifty) dollars.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Tenant**

The first element is that the defendant was a tenant. "Tenant"<sup>1</sup> means the lessee, sublessee or person entitled under a rental agreement to occupy a dwelling unit or premises to the exclusion of others. "Premises" means a dwelling unit and the structure of which it is a part, facilities and appurtenances, i.e., equipment within the dwelling unit, and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant. "Dwelling unit" means any house or building or portion thereof, which is occupied, is designed to be occupied, or is rented, leased or hired out to be occupied as a home or residence of one or more persons.

### **Element 2 - Damaged property**

The second element is that the defendant damaged tangible property. "Tangible property" is something that can be felt and seen. The statute addresses actual, physical damage to property.

### **Element 3 - Landlord**

The third element is that the property is that of the landlord of the premises. "Landlord" means the owner, lessor or sublessor of the dwelling unit, the building of which it is a part or the premises. "Owner" means one or more persons, jointly or severally, in whom is vested 1) all or part of the legal title to property or 2) all or part of the beneficial ownership and a right to present use and enjoyment of the premises and includes a mortgagee in possession. "Person" means an individual, corporation, limited liability company, the state or any political subdivision thereof or agency, business trust, estate, trust, partnership or association, two or more persons having a joint common interest, and any other legal or commercial entity.

#### **Element 4 - Value**

The fourth element is that the defendant caused damage to this property in an amount exceeding (\$1,500 / \$250); that is, the value of the property was lowered by at least that amount. The decrease in value may be proved by evidence showing the cost of repairs necessary to restore the property to its condition immediately before the alleged damage by the defendant. Damage may also be proved by evidence showing a property value decrease in excess of (\$1,500 / \$250).

#### **Element 5 - Intentionally / Recklessly**

The fifth element is that the defendant *<insert as appropriate:>*<sup>2</sup>

- intentionally caused this damage. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*
- recklessly caused this damage. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<See Recklessness, Instruction 2.3-4.>*

#### **Element 6 - No right**

The sixth element is that the defendant had no reasonable ground to believe that (he/she) had a right to damage the property. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was a tenant, 2) (he/she) damaged or tampered with tangible property, 3) the property belonged to the landlord of the premises, 4) the property damage exceeded (\$1,500 / \$250), 5) the defendant (intentionally / recklessly) damaged the property, and 6) (he/she) had no reasonable ground to believe that (he/she) had a right to damage the property.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal damage of a landlord's property in the (first / second / third) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Definitions for "tenant," "landlord," and "premises" are from § 47a-1, incorporated by reference in §§ 53a-117e, 53a-117f, and 53a-117g.

<sup>2</sup> Intentional conduct applies to first degree (with damages exceeding \$1500) and second degree (with damages exceeding \$250); recklessness applies to second degree (with damages exceeding \$1500) and third degree (with damages exceeding \$250).

## 9.5-12 Criminal Trover in the First Degree -- § 53a-126a

Revised to December 1, 2007 (modified June 13, 2008)

The defendant is charged [in count \_\_\_] with criminal trover in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal trover in the first degree when (he/she) forcibly enters or forcibly removes the ignition of the motor vehicle of another and uses the motor vehicle without the consent of such owner, and such use results in damage to or diminishes the value of such motor vehicle or subjects such owner to economic loss, fine or other penalty.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Forcibly entered or removed the ignition of a motor vehicle**

The first element is that the defendant forcibly (entered / removed the ignition of) a motor vehicle of another. A motor vehicle has its ordinary meaning and includes *<insert type of motor vehicle alleged>*.

### **Element 2 - Used motor vehicle without consent of owner**

The second element is that the defendant used the motor vehicle without the consent of the owner. "Owner" means not only the true or lawful owner, but any person who has a superior right to that of the defendant. A person does an act "without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

### **Element 3 - Damage to vehicle or other economic loss**

The third element is that the defendant's use of the motor vehicle without the owner's consent

- resulted in damage to or diminished the value of the motor vehicle.
- subjected the owner of the vehicle to economic loss, fine or other penalty.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant forcibly (entered / removed the ignition of) a motor vehicle of another, 2) (he/she) used the motor vehicle without the consent of the owner, and 3) *<insert specific allegations regarding damages, loss, fine or penalty>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal trover in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

*Commentary*

*Subsequent offenders*

General Statutes § 53a-126a (b) provides for an enhanced sentence if the defendant has previously been convicted of one or more violations of § 53a-126a. Pursuant to Practice Book § 36-14, the prior conviction must be charged in a Part B information so that the jury is unaware of the prior conviction during the trial on the current charge. If a guilty verdict is returned, the jury must then be instructed on the second part of the information. See Subsequent Offenders, Instruction 2.12-2.

## 9.5-13 Criminal Trover in the Second Degree -- § 53a-126b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal trover in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal trover in the second degree when, knowing that (he/she) is not licensed or privileged to do so, (he/she) uses the personal property of another without the consent of such owner, and such use results in damage to or diminishes the value of such property or subjects such owner to economic loss, fine or other penalty.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Used property of another**

The first element is that the defendant used the personal property of another. *<Identify the property.>*

### **Element 2 - Without consent**

The second element is that (he/she) did not have the consent of the owner. "Owner" means not only the true or lawful owner, but any person who has a superior right to that of the defendant. A person does an act "without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

### **Element 3 - With knowledge**

The third element is that (he/she) knew that (he/she) was not licensed or privileged to do so. To be "licensed or privileged," the defendant must either have consent from the person in possession of the property or have some right to use the property. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. *<See Knowledge, Instruction 2.3-3.>*

### **Element 4 - Damage to property or other economic loss**

The fourth element is that the defendant's use of the property without the owner's consent

- resulted in damage to or diminished the value of the property.
- subjected the owner of the property to economic loss, fine or other penalty.

"Economic loss" includes uncompensated economic loss that exceeds \$500 suffered by an owner of personal property who is engaged in the business of renting or leasing personal property when a person to whom the owner has rented or leased the property pursuant to a written agreement providing for the return of the property at a specified time fails to return the property within 120 hours after the owner sends a written demand to the person for the return of the property by registered mail addressed to the person at the person's address as shown in the written agreement, unless a more recent address is known to the owner. Acknowledgment of the receipt of such

written demand by the person shall not be necessary to establish that 120 hours have passed since such written demand was sent.<sup>1</sup> *<Review evidence pertaining to demand letter.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant used personal property of another, 2) (he/she) did not have the consent of the owner, 3) (he/she) knew that (he/she) was not licensed or privileged to use the property, and 4) *<insert specific allegations regarding damages, loss, fine or penalty>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal trover in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes 53a-126b (b). "The provisions of this subsection shall not apply to personal property that is rented or leased (1) for personal, family or household purposes, or (2) pursuant to chapter 743i [Consumer Rent-to-Own Agreements]."

## **9.6 COMPUTER CRIMES**

### **9.6 Introduction to Computer Crimes**

**9.6-1 Unauthorized Access to a Computer System -- § 53a-251 (b) and §§ 53a-252 through 53a-256**

**9.6-2 Theft of Computer Services -- § 53a-251 (c) and §§ 53a-252 through 53a-256**

**9.6-3 Interruption of Computer Services -- § 53a-251 (d) and §§ 53a-252 through 53a-256**

**9.6-4 Misuse of Computer System Information -- § 53a-251 (e) (1) and §§ 53a-252 through 53a-256**

**9.6-5 Misuse of Computer System Information -- § 53a-251 (e) (2) and §§ 53a-252 through 53a-256**

**9.6-6 Misuse of Computer System Information -- § 53a-251 (e) (3) and (4) and §§ 53a-252 through 53a-256**

**9.6-7 Destruction of Computer Equipment -- § 53a-251 (f) and §§ 53a-252 through 53a-256**

## 9.6 Introduction to Computer Crimes

Revised to December 1, 2007

Section 53a-251 defines six different computer crimes. Sections 53a-252 through 53a-256 specify the degrees of the crimes, which generally depend on the value of the property or services obtained without authorization or the damages to the services or property. Third degree, defined in § 53a-254, also applies when a defendant commits any of the computer crimes and recklessly creates a risk of serious physical injury to another person.

The computer crimes in this section include:

- § 53a-251 (b) -- Unauthorized access to a computer system.
- § 53a-251 (c) -- Theft of computer services.
- § 53a-251 (d) -- Interruption of computer services.
- § 53a-251 (e) -- Misuse of computer system information.
- § 53a-251 (f) -- Destruction of computer equipment.

Because of the complexity of the technology used in committing these crimes, the instructions will have to be narrowly tailored to the facts of each case.

See also 10.5 Internet Crimes.

## 9.6-1 Unauthorized Access to a Computer System -- § 53a-251 (b) and §§ 53a-252 through 53a-256

Revised to December 1, 2007

**Note:** The various types of computer crime are defined in § 53a-251. The degree of the offense is determined by the value of the property damaged or services stolen or interfered with. See § 53a-252 (first degree: exceeds \$10,000), § 53a-253 (second degree: exceeds \$5,000), § 53a-254 (third degree: exceeds \$1,000), § 53a-255 (fourth degree: exceeds \$500), and § 53a-256 (fifth degree: does not exceed \$500). In addition, the value of the property or services is irrelevant if the defendant recklessly created a risk of serious physical injury, in which case it is third degree (e.g., interfering with the computer system of a medical or emergency organization).

The defendant is charged [in count \_\_\_] with unauthorized access to a computer system in the (first / second / third/ fourth / fifth) degree. The statute defining this crime reads in pertinent part as follows:

a person is guilty of the computer crime of unauthorized access to a computer system when, knowing that (he/she) is not authorized to do so, (he/she) accesses or causes to be accessed any computer system without authorization.

[<Insert if appropriate:> For the purposes of this statute, "person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official. <Describe the status of the defendant as a person.>]

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Accessed computer system**

The first element is that the defendant accessed a computer system. "Computer system" means a computer, its software, related equipment, communications facilities, if any, and includes computer networks. "Computer" means a programmable, electronic device capable of accepting and processing data. "Computer network" means (A) a set of related devices connected to a computer by communications facilities, or (B) a complex of two or more computers, including related devices, connected by communications facilities. "Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

<Describe the specific allegations of the computer system accessed.>

### **Element 2 - Without authorization**

The second element is that the defendant was not authorized to access <identify computer system>.

### **Element 3 - Knowledge**

The third element is that the defendant knew that (he/she) was not authorized to access <identify computer system>. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

### **Element 4 - Value of property or services / Risk of serious physical injury**

[<If the state is alleging a dollar amount of damages:>

The fourth element is that the damage to or the value of the property or computer services <insert according to degree charged:>

- **First degree:** exceeds \$10,000.
- **Second degree:** exceeds \$5,000.
- **Third degree:** exceeds \$1,000.
- **Fourth degree:** exceeds \$500.
- **Fifth degree:** is \$500 or less.

The value of property or computer services is either 1) the market value of the property or computer services at the time of the crime; or 2) if the property or computer services are unrecoverable, damaged or destroyed as a result of the crime, the cost of reproducing or replacing the property or computer services at the time of the crime. When the value of the property or computer services or damage to the property or the services cannot be satisfactorily ascertained, the value shall be deemed to be two hundred fifty dollars. The value of private personal data shall be deemed to be one thousand five hundred dollars.<sup>1</sup>

[<If there are multiple items and their values can be aggregated:> In making this determination, you may add or aggregate the value of the property involved. You can only aggregate amounts if the thefts were committed pursuant to one scheme or course of conduct, whether from the same or several persons.<sup>2</sup>]

[<If the state is alleging reckless conduct:><sup>3</sup>

The fourth element is that the defendant engaged in conduct that created a risk of serious physical injury to another person. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See Recklessness, Instruction 2.3-4.>

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

### **[Affirmative Defense**

The statute defining this offense also defines an affirmative defense, which the defendant has raised. <See Affirmative Defense, Instruction 2.9-1.>

The defense is defined as follows:

it shall be an affirmative defense to a prosecution for unauthorized access to a computer system that *<insert appropriate subsection:>*

- **§ 53a-251 (b) (2) (A):** the person reasonably believed that the owner of the computer system, or a person empowered to license access thereto, had authorized (him/her) to access the system.
- **§ 53a-251 (b) (2) (B):** the person reasonably believed that the owner of the computer system, or a person empowered to license access thereto, would have authorized (him/her) to access the system without payment of any consideration.
- **§ 53a-251 (b) (2) (C):** the person reasonably could not have known that (his/her) access was unauthorized.

The defendant has presented evidence that *<describe the defendant's specific claims regarding this defense>.*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant accessed *<insert computer system>*, 2) (he/she) was not authorized to do so, and 3) *<insert the value of the damages or the allegations of recklessness>*.

*[<If defendant has not raised the affirmative defense:>*

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of unauthorized access to a computer system in the (first / second / third/ fourth / fifth) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.]

*[<If defendant has raised the affirmative defense:>*

If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements of the crime of unauthorized access to a computer system in the (first / second / third/ fourth / fifth) degree, you shall then find the defendant not guilty and not consider the defendant's affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved (his/her) defense by a preponderance of the evidence, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.]

---

<sup>1</sup> General Statutes § 53a-259.

<sup>2</sup> General Statutes § 53a-258.

<sup>3</sup> Reckless conduct that creates a risk of serious physical injury to another person is computer crime in the third degree. General Statutes § 53a-254.

## 9.6-2 Theft of Computer Services -- § 53a-251 (c) and §§ 53a-252 through 53a-256

Revised to December 1, 2007

**Note:** The various types of computer crime are defined in § 53a-251. The degree of the offense is determined by the value of the property damaged or services stolen or interfered with. See § 53a-252 (first degree: exceeds \$10,000), § 53a-253 (second degree: exceeds \$5,000), § 53a-254 (third degree: exceeds \$1,000), § 53a-255 (fourth degree: exceeds \$500), and § 53a-256 (fifth degree: does not exceed \$500). In addition, the value of the property or services is irrelevant if the defendant recklessly created a risk of serious physical injury, in which case it is third degree (e.g., interfering with the computer system of a medical or emergency organization).

The defendant is charged [in count \_\_\_] with theft of computer services in the (first / second / third/ fourth / fifth) degree. The statute defining this crime reads in pertinent part as follows:  
a person is guilty of the computer crime of theft of computer services when (he/she) accesses or causes to be accessed or otherwise uses or causes to be used a computer system with the intent to obtain unauthorized computer services.

[<Insert if appropriate:> For the purposes of this statute, "person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official. <Describe the status of the defendant as a person.>]

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Accessed computer system**

The first element is that the defendant accessed or caused to be accessed a computer system or otherwise used or caused to be used a computer system. "Computer system" means a computer, its software, related equipment, communications facilities, if any, and includes computer networks. "Computer" means a programmable, electronic device capable of accepting and processing data. "Computer network" means (A) a set of related devices connected to a computer by communications facilities, or (B) a complex of two or more computers, including related devices, connected by communications facilities. "Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

<Describe the specific allegations of the computer system accessed.>

### **Element 2 - Intent**

The second element is that the defendant specifically intended to obtain unauthorized computer services. "Computer services" includes, but is not limited to, computer access, data processing and data storage.

### **Element 3 - Value of property or services / Risk of serious physical injury**

[<If the state is alleging a dollar amount of damages:>

The third element is that the damage to or the value of the property or computer services <insert according to degree charged:>

- **First degree:** exceeds \$10,000.
- **Second degree:** exceeds \$5,000.
- **Third degree:** exceeds \$1,000.
- **Fourth degree:** exceeds \$500.
- **Fifth degree:** is \$500 or less.

The value of property or computer services is either 1) the market value of the property or computer services at the time of the crime; or 2) if the property or computer services are unrecoverable, damaged or destroyed as a result of the crime, the cost of reproducing or replacing the property or computer services at the time of the crime. When the value of the property or computer services or damage to the property or the services cannot be satisfactorily ascertained, the value shall be deemed to be two hundred fifty dollars. The value of private personal data shall be deemed to be one thousand five hundred dollars.<sup>1</sup>

[<If there are multiple items and their values can be aggregated:> In making this determination, you may add or aggregate the value of the property involved. You can only aggregate amounts if the thefts were committed pursuant to one scheme or course of conduct, whether from the same or several persons.<sup>2</sup>]

[<If the state is alleging reckless conduct:><sup>3</sup>

The third element is that the defendant engaged in conduct that created a risk of serious physical injury to another person. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant accessed <insert computer system>, 2) (he/she) intended to obtain unauthorized computer services, and 3) <insert the value of the damages or the allegations of recklessness>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of theft of computer services in the (first / second / third/ fourth / fifth) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-259.

<sup>2</sup> General Statutes § 53a-258.

<sup>3</sup> Reckless conduct that creates a risk of serious physical injury to another person is computer crime in the third degree. General Statutes § 53a-254.

## 9.6-3 Interruption of Computer Services -- § 53a-251 (d) and §§ 53a-252 through 53a-256

Revised to December 1, 2007

**Note:** The various types of computer crime are defined in § 53a-251. The degree of the offense is determined by the value of the property damaged or services stolen or interfered with. See § 53a-252 (first degree: exceeds \$10,000), § 53a-253 (second degree: exceeds \$5,000), § 53a-254 (third degree: exceeds \$1,000), § 53a-255 (fourth degree: exceeds \$500), and § 53a-256 (fifth degree: does not exceed \$500). In addition, the value of the property or services is irrelevant if the defendant recklessly created a risk of serious physical injury, in which case it is third degree (e.g., interfering with the computer system of a medical or emergency organization).

The defendant is charged [in count \_\_\_] with interruption of computer services in the (first / second / third/ fourth / fifth) degree. The statute defining this crime reads in pertinent part as follows:

a person is guilty of the computer crime of interruption of computer services when (he/she), without authorization, intentionally or recklessly disrupts or degrades or causes the disruption or degradation of computer services or denies or causes the denial of computer services to an authorized user of a computer system.

[<Insert if appropriate:> For the purposes of this statute, "person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official. <Describe the status of the defendant as a person.>]

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Interfered with the delivery of computer services**

The first element is that the defendant <insert as appropriate:>

- (disrupted / degraded / caused the disruption of / caused the degradation of) computer services. "Computer services" includes, but is not limited to, computer access, data processing and data storage.
- (denied / caused to be denied) computer services to an authorized user of the computer system. "Computer system" means a computer, its software, related equipment, communications facilities, if any, and includes computer networks. "Computer" means a programmable, electronic device capable of accepting and processing data. "Computer network" means (A) a set of related devices connected to a computer by communications facilities, or (B) a complex of two or more computers, including related devices, connected by communications facilities.

<Describe specific allegations.>

## **Element 2 - Without authorization**

The second element is that the defendant was not authorized to *<insert specific allegations>*.

## **Element 3 - Intent / Recklessness**

The third element is that the defendant acted *<insert as appropriate:>*

- with the specific intent to *<insert allegations>*. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*
- recklessly. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<See Recklessness, Instruction 2.3-4.>*

## **Element 4 - Value of property or services / Risk of serious physical injury**

*<If the state is alleging a dollar amount of damages:>*

The fourth element is that the damage to or the value of the property or computer services *<insert according to degree charged:>*

- **First degree:** exceeds \$10,000.
- **Second degree:** exceeds \$5,000.
- **Third degree:** exceeds \$1,000.
- **Fourth degree:** exceeds \$500.
- **Fifth degree:** is \$500 or less.

The value of property or computer services is either 1) the market value of the property or computer services at the time of the crime; or 2) if the property or computer services are unrecoverable, damaged or destroyed as a result of the crime, the cost of reproducing or replacing the property or computer services at the time of the crime. When the value of the property or computer services or damage to the property or the services cannot be satisfactorily ascertained, the value shall be deemed to be two hundred fifty dollars. The value of private personal data shall be deemed to be one thousand five hundred dollars.<sup>1</sup>

*<If there are multiple items and their values can be aggregated:>* In making this determination, you may add or aggregate the value of the property involved. You can only aggregate amounts if the thefts were committed pursuant to one scheme or course of conduct, whether from the same or several persons.<sup>2]</sup>

*<If the state is alleging reckless conduct:>*<sup>3</sup>

The fourth element is that the defendant engaged in conduct that created a risk of serious physical injury to another person. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<See Recklessness, Instruction 2.3-4.>*

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes

serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."]

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (disrupted computer services / degraded computer service / denied computer services to an authorized user), 2) (he/she) was not authorized to do so, 3) (he/she) acted (intentionally / recklessly) and 4) *<insert the value of the damages or the allegations of recklessness>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of interruption of computer services in the (first / second / third/ fourth / fifth) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-259.

<sup>2</sup> General Statutes § 53a-258.

<sup>3</sup> Reckless conduct that creates a risk of serious physical injury to another person is computer crime in the third degree. General Statutes § 53a-254.

## 9.6-4 Misuse of Computer System Information -- § 53a-251 (e) (1) and §§ 53a-252 through 53a-256

Revised to December 1, 2007

**Note:** The various types of computer crime are defined in § 53a-251. The degree of the offense is determined by the value of the property damaged or services stolen or interfered with. See § 53a-252 (first degree: exceeds \$10,000), § 53a-253 (second degree: exceeds \$5,000), § 53a-254 (third degree: exceeds \$1,000), § 53a-255 (fourth degree: exceeds \$500), and § 53a-256 (fifth degree: does not exceed \$500). In addition, the value of the property or services is irrelevant if the defendant recklessly created a risk of serious physical injury, in which case it is third degree (e.g., interfering with the computer system of a medical or emergency organization).

The defendant is charged [in count \_\_\_] with misuse of computer system information in the (first / second / third / fourth / fifth) degree. The statute defining this crime reads in pertinent part as follows:

a person is guilty of misuse of computer system information when as a result of (his/her) (accessing / causing to be accessed) a computer system, (he/she) intentionally (makes / causes to be made) an unauthorized (display / use / disclosure / copy), in any form, of data (residing in / communicated by / produced by) a computer system.

[<Insert if appropriate:> For the purposes of this statute, "person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official. <Describe the status of the defendant as a person.>]

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Accessed computer system**

The first element is that the defendant (accessed / caused to be accessed) a computer system. "Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network. "Computer system" means a computer, its software, related equipment, communications facilities, if any, and includes computer networks. "Computer" means a programmable, electronic device capable of accepting and processing data. "Computer network" means (A) a set of related devices connected to a computer by communications facilities, or (B) a complex of two or more computers, including related devices, connected by communications facilities.

### **Element 2 - Unauthorized actions**

The second element is that the defendant (made / caused to be made) an unauthorized (display / use / disclosure / copy) in any form, of data (residing in / communicated by / produced by) a computer system. "Data" means information of any kind in any form, including computer software.

*<Describe specific allegations.>*

**Element 3 - Intent**

The third element is that the defendant acted with the specific intent to (display / use / disclose / copy) the data from the computer system. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

**Element 4 - Value of property or services / Risk of serious physical injury**

*[<If the state is alleging a dollar amount of damages:>*

The fourth element is that the damage to or the value of the property or computer services *<insert according to degree charged:>*

- **First degree:** exceeds \$10,000.
- **Second degree:** exceeds \$5,000.
- **Third degree:** exceeds \$1,000.
- **Fourth degree:** exceeds \$500.
- **Fifth degree:** is \$500 or less.

The value of property or computer services is either 1) the market value of the property or computer services at the time of the crime; or 2) if the property or computer services are unrecoverable, damaged or destroyed as a result of the crime, the cost of reproducing or replacing the property or computer services at the time of the crime. When the value of the property or computer services or damage to the property or the services cannot be satisfactorily ascertained, the value shall be deemed to be two hundred fifty dollars. The value of private personal data shall be deemed to be one thousand five hundred dollars.<sup>1</sup>

*[<If there are multiple items and their values can be aggregated:>* In making this determination, you may add or aggregate the value of the property involved. You can only aggregate amounts if the thefts were committed pursuant to one scheme or course of conduct, whether from the same or several persons.<sup>2]</sup>

*[<If the state is alleging reckless conduct:>*<sup>3</sup>

The fourth element is that the defendant engaged in conduct that created a risk of serious physical injury to another person. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<See Recklessness, Instruction 2.3-4.>*

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."]

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (accessed / caused to be accessed) a computer system, 2) (he/she) (made / caused to be made) an unauthorized (display / use / disclosure / copy) of data residing on the computer system, 3) (he/she) acted intentionally, and 4) *<insert the value of the damages or the allegations of recklessness>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of interruption of computer services in the (first / second / third/ fourth / fifth) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-259.

<sup>2</sup> General Statutes § 53a-258.

<sup>3</sup> Reckless conduct that creates a risk of serious physical injury to another person is computer crime in the third degree. General Statutes § 53a-254.

## 9.6-5 Misuse of Computer System Information -- § 53a-251 (e) (2) and §§ 53a-252 through 53a-256

Revised to December 1, 2007

**Note:** The various types of computer crime are defined in § 53a-251. The degree of the offense is determined by the value of the property damaged or services stolen or interfered with. See § 53a-252 (first degree: exceeds \$10,000), § 53a-253 (second degree: exceeds \$5,000), § 53a-254 (third degree: exceeds \$1,000), § 53a-255 (fourth degree: exceeds \$500), and § 53a-256 (fifth degree: does not exceed \$500). In addition, the value of the property or services is irrelevant if the defendant recklessly created a risk of serious physical injury, in which case it is third degree (e.g., interfering with the computer system of a medical or emergency organization).

The defendant is charged [in count \_\_\_] with misuse of computer system information in the (first / second / third / fourth / fifth) degree. The statute defining this crime reads in pertinent part as follows:

a person is guilty of the computer crime of misuse of computer system information when (he/she) (intentionally / recklessly) and without authorization <insert appropriate subsection:>

- § 53a-251 (e) (2) (A): (alters / deletes / tampers with / damages / destroys / takes) data intended for use by a computer system, whether residing within or external to a computer system.
- § 53a-251 (e) (2) (B): (intercepts / adds) data to data residing within a computer system.

[<Insert if appropriate:> For the purposes of this statute, "person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official. <Describe the status of the defendant as a person.>]

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Altered, deleted, tampered with, damaged, destroyed or took computer data**

The first element is that the defendant <insert as appropriate:>

- § 53a-251 (e) (2) (A): (altered / deleted / tampered with / damaged / destroyed / took) data intended for use by a computer system. The data could be residing with the computer system or it could be external to the computer at the time.
- § 53a-251 (e) (2) (B): (intercepted / added data to) data residing within a computer system.

"Computer system" means a computer, its software, related equipment, communications facilities, if any, and includes computer networks. "Computer" means a programmable, electronic device capable of accepting and processing data. "Computer network" means (A) a set of related devices connected to a computer by communications facilities, or (B) a complex of

two or more computers, including related devices, connected by communications facilities. "Data" means information of any kind in any form, including computer software.

*<Describe specific allegations.>*

### **Element 2 - Without authorization**

The second element is that the defendant was not authorized to *<insert specific acts alleged>*.

### **Element 3 - Intent / Recklessness**

The third element is that the defendant acted *<insert as appropriate:>*

- with the specific intent to *<insert allegations>*. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*
- recklessly. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. *<See Recklessness, Instruction 2.3-4.>*

### **Element 4 - Value of property or services / Risk of serious physical injury**

*[<If the state is alleging a dollar amount of damages:>*

The fourth element is that the damage to or the value of the property or computer services *<insert according to degree charged:>*

- **First degree:** exceeds \$10,000.
- **Second degree:** exceeds \$5,000.
- **Third degree:** exceeds \$1,000.
- **Fourth degree:** exceeds \$500.
- **Fifth degree:** is \$500 or less.

The value of property or computer services is either 1) the market value of the property or computer services at the time of the crime; or 2) if the property or computer services are unrecoverable, damaged or destroyed as a result of the crime, the cost of reproducing or replacing the property or computer services at the time of the crime. When the value of the property or computer services or damage to the property or the services cannot be satisfactorily ascertained, the value shall be deemed to be two hundred fifty dollars. The value of private personal data shall be deemed to be one thousand five hundred dollars.<sup>1</sup>

*[<If there are multiple items and their values can be aggregated:>* In making this determination, you may add or aggregate the value of the property involved. You can only aggregate amounts if the thefts were committed pursuant to one scheme or course of conduct, whether from the same or several persons.<sup>2]</sup>

*[<If the state is alleging reckless conduct:>*<sup>3</sup>

The fourth element is that the defendant engaged in conduct that created a risk of serious physical injury to another person. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and

unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."]

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant <insert *allegations pertaining to defendant's actions*>, 2) (he/she) was not authorized to do so, 3) (he/she) acted (intentionally / recklessly) and 4) <insert *the value of the damages or the allegations of recklessness*>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of misuse of computer system information in the (first / second / third/ fourth / fifth) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-259.

<sup>2</sup> General Statutes § 53a-258.

<sup>3</sup> Reckless conduct that creates a risk of serious physical injury to another person is computer crime in the third degree. General Statutes § 53a-254.

## 9.6-6 Misuse of Computer System Information -- § 53a-251 (e) (3) and (4) and §§ 53a-252 through 53a-256

Revised to December 1, 2007

**Note:** The various types of computer crime are defined in § 53a-251. The degree of the offense is determined by the value of the property damaged or services stolen or interfered with. See § 53a-252 (first degree: exceeds \$10,000), § 53a-253 (second degree: exceeds \$5,000), § 53a-254 (third degree: exceeds \$1,000), § 53a-255 (fourth degree: exceeds \$500), and § 53a-256 (fifth degree: does not exceed \$500). In addition, the value of the property or services is irrelevant if the defendant recklessly created a risk of serious physical injury, in which case it is third degree (e.g., interfering with the computer system of a medical or emergency organization).

The defendant is charged [in count \_\_\_] with misuse of computer system information in the (first / second / third/ fourth / fifth) degree. The statute defining this crime reads in pertinent part as follows:

a person is guilty of the computer crime of misuse of computer system information when (he/she) *<insert appropriate subsection:>*

- § 53a-251 (e) (3): knowingly receives or retains data obtained in violation of subdivision (1) or (2) of this subsection.
- § 53a-251 (e) (4): uses or discloses data (he/she) knows or believes was obtained in violation of subdivision (1) or (2) of this subsection.

[*<Insert if appropriate:>* For the purposes of this statute, "person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official. *<Describe the status of the defendant as a person.>*]

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Data obtained in violation of subsection (1) or (2)**

The first element is that data was obtained in violation of subdivision (1) or (2) of this subsection. These subsections prohibit *<insert specific prohibitions alleged and the specific allegations concerning how the data was obtained>*.

### **Element 2 - Received / retained / used / disclosed data**

The second element is that the defendant (received / retained / used / disclosed) the data. *<Insert specific allegations.>*

*<See Intent: General, Instruction 2.3-1.>*

### **Element 3 - Knowledge**

The third element is that the defendant knew that the data had been unlawfully obtained. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that

(his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

#### **Element 4 - Value of property or services / Risk of serious physical injury**

[<If the state is alleging a dollar amount of damages:>

The fourth element is that the damage to or the value of the property or computer services <insert according to degree charged:>

- **First degree:** exceeds \$10,000.
- **Second degree:** exceeds \$5,000.
- **Third degree:** exceeds \$1,000.
- **Fourth degree:** exceeds \$500.
- **Fifth degree:** is \$500 or less.

The value of property or computer services is either 1) the market value of the property or computer services at the time of the crime; or 2) if the property or computer services are unrecoverable, damaged or destroyed as a result of the crime, the cost of reproducing or replacing the property or computer services at the time of the crime. When the value of the property or computer services or damage to the property or the services cannot be satisfactorily ascertained, the value shall be deemed to be two hundred fifty dollars. The value of private personal data shall be deemed to be one thousand five hundred dollars.<sup>1</sup>

[<If there are multiple items and their values can be aggregated:> In making this determination, you may add or aggregate the value of the property involved. You can only aggregate amounts if the thefts were committed pursuant to one scheme or course of conduct, whether from the same or several persons.<sup>2</sup>]

[<If the state is alleging reckless conduct:><sup>3</sup>

The fourth element is that the defendant engaged in conduct that created a risk of serious physical injury to another person. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See Recklessness, Instruction 2.3-4.>

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."]

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) data was obtained by <insert specific allegations>, 2) the defendant (received / retained / used / disclosed) the data, 3) the defendant knew that the data had been obtained unlawfully, and 4) <insert the value of the damages or the allegations of recklessness>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of misuse of computer system information in the (first / second / third/ fourth / fifth) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-259.

<sup>2</sup> General Statutes § 53a-258.

<sup>3</sup> Reckless conduct that creates a risk of serious physical injury to another person is computer crime in the third degree. General Statutes § 53a-254.

## 9.6-7 Destruction of Computer Equipment -- § 53a-251 (f) and §§ 53a-252 through 53a-256

Revised to December 1, 2007

**Note:** The various types of computer crime are defined in § 53a-251. The degree of the offense is determined by the value of the property damaged or services stolen or interfered with. See § 53a-252 (first degree: exceeds \$10,000), § 53a-253 (second degree: exceeds \$5,000), § 53a-254 (third degree: exceeds \$1,000), § 53a-255 (fourth degree: exceeds \$500), and § 53a-256 (fifth degree: does not exceed \$500). In addition, the value of the property or services is irrelevant if the defendant recklessly created a risk of serious physical injury, in which case it is third degree (e.g., interfering with the computer system of a medical or emergency organization).

The defendant is charged [in count \_\_\_] with destruction of computer equipment in the (first / second / third/ fourth / fifth) degree. The statute defining this crime reads in pertinent part as follows:

a person is guilty of the computer crime of destruction of computer equipment when (he/she), without authorization, (intentionally / recklessly) (tampered with / takes / transfers / conceals / alters / damages / destroys) any equipment used in a computer system or (intentionally / recklessly) causes any of the foregoing to occur.

[<Insert if appropriate:> For the purposes of this statute, "person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official. <Describe the status of the defendant as a person.>]

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Destroyed computer equipment**

The first element is that the defendant (destroyed / tampered with / took) any equipment used in a computer system. "Computer system" means a computer, its software, related equipment, communications facilities, if any, and includes computer networks.

### **Element 2 - Without authorization**

The second element is that the defendant was not authorized to (destroy / tamper with / take) the equipment.

### **Element 3 - Intent / Recklessness**

The third element is that the defendant acted <insert as appropriate:>

- with the specific intent to <insert allegations>. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>
- recklessly. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that

such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

#### **Element 4 - Value of property or services / Risk of serious physical injury**

[<If the state is alleging a dollar amount of damages:>

The fourth element is that the damage to or the value of the property or computer services  
<insert according to degree charged:>

- **First degree:** exceeds \$10,000.
- **Second degree:** exceeds \$5,000.
- **Third degree:** exceeds \$1,000.
- **Fourth degree:** exceeds \$500.
- **Fifth degree:** is \$500 or less.

The value of property or computer services is either 1) the market value of the property or computer services at the time of the crime; or 2) if the property or computer services are unrecoverable, damaged or destroyed as a result of the crime, the cost of reproducing or replacing the property or computer services at the time of the crime. When the value of the property or computer services or damage to the property or the services cannot be satisfactorily ascertained, the value shall be deemed to be two hundred fifty dollars. The value of private personal data shall be deemed to be one thousand five hundred dollars.<sup>1</sup>

[<If there are multiple items and their values can be aggregated:> In making this determination, you may add or aggregate the value of the property involved. You can only aggregate amounts if the thefts were committed pursuant to one scheme or course of conduct, whether from the same or several persons.<sup>2</sup>]

[<If the state is alleging reckless conduct:><sup>3</sup>

The fourth element is that the defendant engaged in conduct that created a risk of serious physical injury to another person. A person acts "recklessly" with respect to a result described by a statute defining an offense when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur. A person acts "recklessly" with respect to a result or circumstances when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstances exist. <See *Recklessness, Instruction 2.3-4.*>

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

#### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant destroyed computer equipment, 2) (he/she) was not authorized to do so, 3) (he/she) acted (intentionally / recklessly) and 4) <insert the value of the damages or the allegations of recklessness>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of interruption of computer services in the (first / second / third/ fourth / fifth) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53a-259.

<sup>2</sup> General Statutes § 53a-258.

<sup>3</sup> Reckless conduct that creates a risk of serious physical injury to another person is computer crime in the third degree. General Statutes § 53a-254.

# **PART 10: CRIMINAL WRITINGS, FINANCIAL CRIMES, AND FRAUD**

- 10.1 FORGERY**
- 10.2 CHECKS AND CREDIT CARDS**
- 10.3 IDENTITY THEFT**
- 10.4 MONEY LAUNDERING**
- 10.5 INTERNET CRIMES**
- 10.6 INSURANCE FRAUD**
- 10.7 IMPERSONATION**
- 10.8 EAVESDROPPING**
- 10.9 OTHER**

## **10.1 FORGERY**

### **10.1 Introduction to Forgery**

**10.1-1 Forgery in the First Degree -- § 53a-138**

**10.1-2 Forgery in the Second Degree -- § 53a-139**

**10.1-3 Forgery in the Third Degree -- § 53a-140**

**10.1-4 Criminal Simulation -- § 53a-141 (a) (1)**

**10.1-5 Criminal Simulation -- § 53a-141 (a) (2)**

**10.1-6 Forgery of Symbols -- § 53a-142**

## 10.1 Introduction to Forgery

Revised to December 1, 2007

The elements of forgery are: 1) falsifying a written instrument or possessing a falsified written instrument, and 2) the intent to deceive, defraud, or injure. *State v. Brown*, 235 Conn. 502, 509 (1995); *State v. Widlak*, 85 Conn. App. 84, 91-92 (2004); *State v. Henderson*, 47 Conn. App. 542, 551, cert. denied, 244 Conn. 908 (1998).

The term "written instrument" "encompasses every kind of document and other items deemed susceptible of deceitful use in a 'forgery' sense, the main requirement being that it be 'capable of being used to the advantage or disadvantage of some person.'" Commission to Revise the Criminal Statutes, Penal Code comments, Connecticut General Statutes Annotated (West 2007) § 53a-137, p. 322. See *State v. Edwards*, 201 Conn. 125, 149-52 (1986) (the written instrument was the fingerprint card which the defendant signed at the time of his arrest with a fake name to obtain the advantage of a lower bond).

The forgery instruction must be narrowly tailored to the allegations. In *State v. Hahn*, 207 Conn. 555, 561-63 (1988), the Court reversed the defendant's conviction for insufficient evidence because the charging document alleged that the defendant "falsely completed" a mortgage deed, but there was evidence that the deed was missing vital information and was therefore not complete.

### ***Intent***

The intent element ("to deceive, defraud or injure") is stated in the disjunctive so the intent could be any of the three. *State v. Yurch*, 37 Conn. App. 72, 80, appeal dismissed, 235 Conn. 469 (1995). "Deceive indicates an inculcating of one so that he takes the false as true, the unreal as existent, the spurious as genuine." *Id.* To defraud means "to take or withhold from (one) some possession, right or interest by calculated misstatement or perversion of truth, treachery, or other deception." *Id.*, 81. "To defraud, then, means to deceive in order to cheat or to deceive in a manner calculated to cause injury." *Id.* Deceive does not require an intent to injure because then it would mean the same as defraud. "Our interpretation of an intent to deceive is supported by one of the purposes for the criminalization of forgery, which is to safeguard 'confidence in the genuineness of documents relied upon in commercial and business activities.' W. LaFave, *Criminal Law* (1972) § 90, p. 671." *Id.*, 81 n.10. See also *State v. DeCaro*, 252 Conn. 229, 242 n.12 (2000) (deceive does not require an intent to injure). In *DeCaro*, it was sufficient to show that the defendant altered public documents in an effort to conceal her inadequate accounting and record keeping and not necessarily to conceal larcenous conduct.

### ***Other***

Forgery in the second degree and fabricating physical evidence are separate offenses. *State v. Servello*, 80 Conn. App. 313, 320-24 (2003), cert. denied, 267 Conn. 914 (2004) (fabricating evidence is harm to the court, whereas forgery is harm to an individual).

## 10.1-1 Forgery in the First Degree -- § 53a-138

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with forgery in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of forgery in the first degree when, with intent to (defraud / deceive / injure) another, (he/she) *<insert as appropriate:>*

- falsely (makes / completes / alters) a written instrument,
- (issues / possesses) any written instrument that (he/she) knows to be forged, which is or purports to be, or which is calculated to become or represent if completed, *<insert as appropriate:>*
- part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality.
- part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Made, issued, falsified or possessed a written instrument**

The first element is that the defendant *<insert as appropriate:>*

- falsely (made / completed / altered) a written instrument.
- (issued / possessed) any written instrument that (he/she) knew to be forged.

A "written instrument" is any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying, or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person. A "forged instrument" means a written instrument which has been falsely made, completed or altered.

For first degree forgery, the written instrument must be *<insert as appropriate:>*

- part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality.
- part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property.

*<Describe the written instrument at issue.>*

[*<If charged with falsely making, completing, or altering, insert appropriate definitions:>*

- A written instrument may be complete or incomplete. A "complete written instrument" is a written instrument that is fully drawn with respect to every essential feature thereof, whereas an "incomplete written instrument" is one that contains some matter by way of content or authentication but requires additional matter in order to render it a complete written instrument.
- A person "falsely makes" a written instrument when
  - (he/she) makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its

ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, (he/she) did not authorize the making or drawing thereof.

- (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.
- A person "falsely completes" a written instrument when
  - (he/she), by adding, inserting or changing matter, transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.
  - (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.
- A person "falsely alters" a written instrument when,
  - (he/she), without the authority of any person entitled to grant it, changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.
  - (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.

The term "falsely" does not refer to the content or tone of the writing, or to the fact stated in the writing, but implies that the paper is false, not genuine, fictitious, not a true writing, without regard to the truth or falsehood of the statement it contains.]

[<If charged with issuing and/or possessing, insert appropriate definitions:>

- "Issuing" means signing, endorsing, circulating, distributing, publishing or the like. The state must prove that the defendant knew that the <insert type of written instrument> was forged. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>]
- "Possession" means either having the object on one's person or otherwise having control over the object, that is, knowing where it is and being able to access it. Possession also requires that the defendant knew that (he/she) was in possession of the <insert type of written instrument>. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that the <insert type of written instrument> was forged. <See Possession, Instruction 2.11-1.>]

## **Element 2 - Intent**

The second element is that the defendant had the specific intent to (deceive / defraud / injure) another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (falsely made / falsely completed / falsely altered / issued / possessed) a <insert type of written instrument> [*insert only if the allegation is issuing or possessing*] that (he/she) knew to have been forged], and 2) (he/she) intended to (deceive / defraud / injure) another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of forgery in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.1-2 Forgery in the Second Degree -- § 53a-139

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with forgery in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of forgery in the second degree when, with intent to (defraud / deceive / injure) another, (he/she) *<insert as appropriate:>*

- falsely (makes / completes / alters) a written instrument,
- (issues / possesses) any written instrument that (he/she) knows to be forged, which is or purports to be, or which is calculated to become or represent if completed *<insert as appropriate:>*
  - a deed, will, codicil, contract, assignment, commercial instrument or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status.
  - a public record or an instrument filed or required or authorized by law to be filed in or with a public office or public servant.
  - a written instrument officially issued or created by a public office, public servant or governmental instrumentality.
  - a prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Made, issued, falsified or possessed a written instrument**

The first element is that the defendant *<insert as appropriate:>*

- falsely (made / completed / altered) a written instrument.
- (issued / possessed) any written instrument that (he/she) knew to be forged.

A "written instrument" is any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying, or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person. A "forged instrument" means a written instrument which has been falsely made, completed or altered.

For second degree forgery, the written instrument must be *<insert as appropriate:>*

- a deed, will, codicil, contract, assignment, commercial instrument or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status. This list covers the most common legal instruments or commercial documents that the average person will ever be confronted with during (his/her) lifetime. For instance, it mentions contracts and commercial instruments. They are the instruments that a lawyer would draw for you if you were going into or out of business and cover that whole spectrum of commercial undertaking. A deed is an instrument that conveys title to a parcel of real estate. A will is an instrument drawn by a person during (his/her) lifetime in which (he/she) gives an interest to some part or all of

(his/her) estate to one or more persons, title to pass to such person at (his/her) death. A codicil is an instrument that modifies or changes a will in some respect, and becomes a part of the will. An assignment is an instrument assigning or conveying an interest from one person to another.

- a public record or an instrument filed or required or authorized by law to be filed in or with a public office or public servant. These are instruments that are part of a legal matter or part of litigation. For instance, if you wish to determine whether someone has ever filed a petition for bankruptcy, you could search the records in the proper office and determine if such matter is on file and then have access to all the legal instruments in the matter.
- a written instrument officially issued or created by a public office, public servant or governmental instrumentality. Examples of such instruments include a birth certificate or a death certificate.
- a prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law. This refers to medical prescriptions for drugs or therapeutic devices.

*<Describe the written instrument at issue.>*

*[<If charged with falsely making, completing, or altering, insert appropriate definitions:>*

- A written instrument may be complete or incomplete. A "complete written instrument" is a written instrument that is fully drawn with respect to every essential feature thereof, whereas an "incomplete written instrument" is one that contains some matter by way of content or authentication but requires additional matter in order to render it a complete written instrument.
- A person "falsely makes" a written instrument when
  - (he/she) makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, (he/she) did not authorize the making or drawing thereof.
  - (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.
- A person "falsely completes" a written instrument when
  - (he/she), by adding, inserting or changing matter, transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.
  - (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.
- A person "falsely alters" a written instrument when,
  - (he/she), without the authority of any person entitled to grant it, changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in

all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

- (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.

The term "falsely" does not refer to the content or tone of the writing, or to the fact stated in the writing, but implies that the paper is false, not genuine, fictitious, not a true writing, without regard to the truth or falsehood of the statement it contains.]

[<If charged with issuing and/or possessing, insert appropriate definitions:>

- "Issuing" means signing, endorsing, circulating, distributing, publishing or the like. The state must prove that the defendant knew that the <insert type of written instrument> was forged. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>]
- "Possession" means either having the object on one's person or otherwise having control over the object, that is, knowing where it is and being able to access it. Possession also requires that the defendant knew that (he/she) was in possession of the <insert type of written instrument>. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that the <insert type of written instrument> was forged. <See Possession, Instruction 2.11-1.>]

### **Element 2 - Intent**

The second element is that the defendant had the specific intent to (deceive / defraud / injure) another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (falsely made / falsely completed / falsely altered / issued / possessed) a <insert type of written instrument> [<insert only if the allegation is issuing or possessing> that (he/she) knew to have been forged], and 2) (he/she) intended to (deceive / defraud / injure) another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of forgery in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.1-3 Forgery in the Third Degree -- § 53a-140

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with forgery in the third degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of forgery in the third degree when, with intent to (defraud / deceive / injure) another, (he/she) *<insert as appropriate:>*

- falsely (makes / completes / alters) a written instrument.
- (issues / possesses) any written instrument that (he/she) knows to be forged.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Made, issued, falsified or possessed a written instrument**

The first element is that the defendant *<insert as appropriate:>*

- falsely (made / completed / altered) a written instrument.
- (issued / possessed) any written instrument that (he/she) knew to be forged.

A "written instrument" is any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying, or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person. A "forged instrument" means a written instrument which has been falsely made, completed or altered.

*<Describe the written instrument at issue.>*

*[<If charged with falsely making, completing, or altering, insert appropriate definitions:>*

- A written instrument may be complete or incomplete. A "complete written instrument" is a written instrument that is fully drawn with respect to every essential feature thereof, whereas an "incomplete written instrument" is one that contains some matter by way of content or authentication but requires additional matter in order to render it a complete written instrument.
- A person "falsely makes" a written instrument when
  - (he/she) makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, (he/she) did not authorize the making or drawing thereof.
  - (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.
- A person "falsely completes" a written instrument when
  - (he/she), by adding, inserting or changing matter, transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

- (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.
- A person "falsely alters" a written instrument when,
  - (he/she), without the authority of any person entitled to grant it, changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.
  - (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.

The term "falsely" does not refer to the content or tone of the writing, or to the fact stated in the writing, but implies that the paper is false, not genuine, fictitious, not a true writing, without regard to the truth or falsehood of the statement it contains.]

[<If charged with issuing and/or possessing, insert appropriate definitions:>

- "Issuing" means signing, endorsing, circulating, distributing, publishing or the like. The state must prove that the defendant knew that the <insert type of written instrument> was forged. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>]
- "Possession" means either having the object on one's person or otherwise having control over the object, that is, knowing where it is and being able to access it. Possession also requires that the defendant knew that (he/she) was in possession of the <insert type of written instrument>. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that the <insert type of written instrument> was forged. <See Possession, Instruction 2.11-1.>]

### **Element 2 - Intent**

The second element is that the defendant had the specific intent to (deceive / defraud / injure) another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (falsely made / falsely completed / falsely altered / issued / possessed) a written instrument [<insert only if the allegation is issuing or possessing> that (he/she) knew to have been forged], and 2) (he/she) specifically intended to (deceive / defraud / injure) another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of forgery in the third degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.1-4 Criminal Simulation -- § 53a-141 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with criminal simulation. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal simulation when with intent to defraud, (he/she) makes or alters any object in such manner that it appears to have an antiquity, rarity, source or authorship which it does not in fact possess.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Made or altered an object to falsify it**

The first element is that the defendant made or altered an object in such manner that it appeared to have an antiquity, rarity, source or authorship that it did not in fact possess. Simulation is the assumption of a false appearance. Criminal simulation is a feigned or fictitious transaction to effect a fraud.

### **Element 2 - Intent to defraud**

The second element is that the defendant specifically intended to defraud another person. <See *Intent to Defraud, Instruction 2.3-6.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant made or altered <insert type of object and describe how it had been falsified>, and 2) (he/she) intended to defraud another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal simulation, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.1-5 Criminal Simulation -- § 53a-141 (a) (2)

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with criminal simulation. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal simulation when with knowledge of its true character and with intent to defraud, (he/she) issues or possesses an object that has been made or altered in such manner that it appears to have an antiquity, rarity, source or authorship that it does not in fact possess.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Issued or possessed a falsified object

The first element is that the defendant issued or possessed an object that had been made or altered in such manner that it appeared to have an antiquity, rarity, source or authorship that it did not in fact possess. Simulation is the assumption of a false appearance. Criminal simulation is a feigned or fictitious transaction to effect a fraud. *<Insert as appropriate:>*

- "Issuing" means signing, endorsing, circulating, distributing, publishing or the like.
- "Possession" means either having the object on one's person or otherwise having control over the object, that is, knowing where it is and being able to access it. Possession also requires that the defendant knew that (he/she) was in possession of the *<insert type of written instrument>*. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that the *<insert type of written instrument>* was forged. *<See Possession, Instruction 2.11-1.>*

### Element 2 - Knowledge

The second element is that the defendant knew the true character of the object. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. *<See Knowledge, Instruction 2.3-3.>*

### Element 3 - Intent to defraud

The third element is that the defendant specifically intended to defraud another person. *<See Intent to Defraud, Instruction 2.3-6.>*

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (issued / possessed) *<insert type of object and describe how it had been falsified>*, 2) (he/she) knew the true character of the object, and 3) (he/she) intended to (deceive / defraud / injure) another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal simulation, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.1-6 Forgery of Symbols -- § 53a-142

Revised to November 17, 2015

The defendant is charged [in count \_\_\_] with forgery of symbols. The statute defining this offense reads in pertinent part as follows:

a person is guilty of forgery of symbols of value when, with intent to defraud, deceive or injure another, (he/she) *<insert as appropriate:>*

- falsely (makes / completes / alters) a written instrument,
- (issues / possesses) any written instrument that (he/she) knows to be forged, which is or purports to be, or which is calculated to become or represent if completed, part of an issue of *<insert as appropriate:>*
- tokens.
- public transportation transfers.
- certificates.
- articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Made, falsified, issued or possessed a written instrument**

The first element is that the defendant *<insert as appropriate:>*

- falsely (made / completed / altered) a written instrument.
- (issued / possessed) any written instrument that (he/she) knew to be forged.

A "written instrument" is any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying, or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person. A "forged instrument" means a written instrument which has been falsely made, completed or altered.

For this offense, the written instrument must be part of an issue of *<insert as appropriate:>*

- tokens.
- public transportation transfers.
- certificates.
- articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services.

*<Describe the written instrument at issue.>*

*[<If charged with falsely making, completing, or altering, insert appropriate definitions:>*

- A written instrument may be complete or incomplete. A "complete written instrument" is a written instrument that is fully drawn with respect to every essential feature thereof, whereas an "incomplete written instrument" is one that contains some matter by way of content or authentication but requires additional matter in order to render it a complete written instrument.
- A person "falsely makes" a written instrument when

- (he/she) makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, (he/she) did not authorize the making or drawing thereof.
- (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.
- A person "falsely completes" a written instrument when
  - (he/she), by adding, inserting or changing matter, transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.
  - (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.
- A person "falsely alters" a written instrument when,
  - (he/she), without the authority of any person entitled to grant it, changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.
  - (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign in such capacity.

The term "falsely" does not refer to the content or tone of the writing, or to the fact stated in the writing, but implies that the paper is false, not genuine, fictitious, not a true writing, without regard to the truth or falsehood of the statement it contains.]

[<If charged with issuing and/or possessing, insert appropriate definitions:>

- "Issuing" means signing, endorsing, circulating, distributing, publishing or the like. The state must prove that the defendant knew that the <insert type of written instrument> was forged. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>]
- "Possession" means either having the object on one's person or otherwise having control over the object, that is, knowing where it is and being able to access it. Possession also requires that the defendant knew that (he/she) was in possession of the <insert type of written instrument>. That is, that (he/she) was aware that (he/she) was in possession of it and was aware of its nature. The state must prove beyond a reasonable doubt that the defendant knew that the <insert type of written instrument> was forged. <See Possession, Instruction 2.11-1.>]

## **Element 2 - Intent**

The second element is that the defendant had the specific intent to (deceive / defraud / injure) another person. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (falsely made / falsely completed / falsely altered / issued / possessed) a <insert type of written instrument> [*insert only if the allegation is issuing or possessing*] that (he/she) knew to have been forged], and 2) (he/she) intended to (deceive / defraud / injure) another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of forgery of symbols, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **10.2 CHECKS AND CREDIT CARDS**

- 10.2-1 Issuing or Passing a Bad Check -- § 53a-128**
- 10.2-2 False Statement to Procure Issuance of a Credit Card -- § 53a-128b**
- 10.2-3 Credit Card Theft -- § 53a-128c (a)**
- 10.2-4 Credit Card Theft -- § 53a-128c (b)**
- 10.2-5 Illegal Transfer of a Credit Card -- § 53a-128c (c)**
- 10.2-6 Obtaining a Credit Card by Fraud -- § 53a-128c (d)**
- 10.2-7 Receiving Illegally Obtained Credit Cards -- § 53a-128c (e)**
- 10.2-8 Credit Card Forgery -- § 53a-128c (f)**
- 10.2-9 Credit Card Forgery -- § 53a-128c (g)**
- 10.2-10 Illegal Use of a Credit Card -- § 53a-128d (1)**
- 10.2-11 Illegal Use of a Credit Card -- § 53a-128d (2)**
- 10.2-12 Illegal Use of a Credit Card -- § 53a-128d (3)**
- 10.2-13 Illegal Furnishing of Money, Goods or Services on a Credit Card -- § 53a-128e (a)**
- 10.2-14 Illegal Furnishing of Money, Goods or Services on a Credit Card -- § 53a-128e (b)**

- 10.2-15 Unlawful Completion of a Credit Card -- § 53a-128f**
- 10.2-16 Unlawful Possession of Items Used in the Production of Credit Cards -- § 53a-128f**
- 10.2-17 Receipt of Money, Goods or Services Obtained by Illegal Use of a Credit Card -- § 53a-128g**
- 10.2-18 Extortionate Extension of Credit -- § 53-390**
- 10.2-19 Advancing Money for Extortionate Extension of Credit -- § 53-391**
- 10.2-20 Participation or Conspiracy in Use of Extortionate Means -- § 53-392**

## 10.2-1 Issuing or Passing a Bad Check -- § 53a-128

Revised to December 1, 2007 (modified November 6, 2014)

The defendant is charged [in count \_\_\_] with (issuing / passing) a bad check. The statute defining this offense reads in pertinent part as follows:

a person is guilty of issuing a bad check when *<insert appropriate subsection:>*

- **§ 53a-128 (a) (1):** as a (drawer / representative drawer), (he/she) issues a check knowing that ((he/she) / (his/her) principal) does not then have sufficient funds with the drawee to cover it; and (he/she) intends or believes at the time of issuance that payment will be refused by the drawee upon presentation, and payment is refused by the drawee upon presentation.
- **§ 53a-128 (a) (2):** (he/she) passes a check knowing that the drawer thereof does not then have sufficient funds with the drawee to cover it, and (he/she) intends or believes at the time the check is passed that payment will be refused by the drawee upon presentation, and payment is refused by the drawee upon presentation.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Issued / passed a check**

The first element is that the defendant (issued / passed) a check. *<Insert appropriate definitions:>*

- "Check" means any check, draft or similar sight order for the payment of money that is not postdated with respect to the time of issuance.
- A person "issues" a check when, as drawer or representative drawer thereof, (he/she) delivers it or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to such check. One who draws a check with intent that it be so delivered is deemed to have issued it if the delivery occurs.
- A person "passes" a check when, being a payee, holder or bearer of a check that previously has been or purports to have been drawn and issued by another, (he/she) delivers it, for a purpose other than collection, to a third person who thereby acquires a right with respect thereto.
- "Drawer" of a check means a person whose name appears thereon as the primary obligor, whether the actual signature be that of (himself/herself) or of a person purportedly authorized to draw the check in (his/her) behalf.
- "Representative drawer" means a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor.

### **Element 2 - Knowledge of insufficient funds**

The second element is that the defendant knew that there were insufficient funds to cover that check. *<Insert appropriate definitions:>*

- "Funds" means money or credit.
- A drawer has "insufficient funds" with a drawee to cover a check when (he/she) has no funds or account whatever, or funds in an amount less than that of the check; and a check

dishonored for "no account" shall also be deemed to have been dishonored for "insufficient funds."

- "Drawee" means a person who must make payment on the check. In most cases, this will be a bank.

### **Element 3 - Intent**

The third element is that (he/she) intended or believed that payment on the check would be refused by the drawee upon presentation.

*<Insert if the presumption in § 53a-128 (b) has been raised:>*

[The law presumes that an issuer of a check, other than a postdated check, knew that the check would not be paid because of an insufficiency of funds where either: (1) the issuer has no account with the drawee at the time the check or order was issued, or (2) where the check is presented to the drawee for payment within thirty days of its issuance and the drawee refuses to make payment for reason of insufficient funds, notifies the drawer of such refusal and the drawer thereafter fails to make good on payment within eight days after receiving notice of such refusal. This means that you may find, but do not have to, that the defendant knew the check would be refused due to insufficient funds if you find that the defendant did not have an account with the bank at the time the check was issued, or the bank had notified the defendant that it had refused payment and the defendant did not make good on the payment within eight days.]

### **Element 3 - Refusal of check by drawee**

The third element is that payment was refused by the drawee upon presentation.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (issued / passed) a check, 2) (he/she) knew that there were insufficient funds to cover the check, 3) (he/she) intended or believed that payment on the check would be refused by the drawee, and 4) the check was refused by the drawee.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of (issuing / passing) a bad check, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### *Commentary*

#### ***Sentence Enhancer***

Section 53a-128 (c) provides for graduated penalties based on the amount of the check. The amounts were raised by Public Acts 2014, No. 233, § 6, effective October 1, 2014, as shown in chart below.

<b>As of October 1, 2014</b>	<b>Prior to October 1, 2014</b>	<b>Classification</b>
> \$2,000	> \$1,000	D felony
> \$1,000 and < \$2,000	> \$500 and < \$1,000	A misdemeanor
> \$500 and < \$1000	> \$250 and < \$500	B misdemeanor
< \$500	< \$250	C misdemeanor

The jury must find this fact proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 10.2-2 False Statement to Procure Issuance of a Credit Card -- § 53a-128b

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with making a false statement for the purpose of procuring a credit card. The statute defining this offense imposes punishment on any person who makes or causes to be made, either directly or indirectly, any false statement in writing, knowing it to be false and with intent that it be relied on, respecting (his/her/another person's) identity or (his/her/another person's) financial condition, for the purpose of procuring the issuance of a credit card.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - False statement regarding identity**

The first element is that the defendant made or caused to be made, either directly or indirectly, a false statement in writing, respecting (his/her/another person's) identity or (his/her/another person's) financial condition or that of any other person.

### **Element 2 - With knowledge**

The second element is that the defendant knew that the statement was false. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Element 3 - Intent**

The third element is that the defendant intended that the statement be relied upon for the purpose of procuring the issuance of a credit card. "Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant made or caused to be made a false statement in writing, respecting (his/her) identity or that of any other person, or (his/her) financial condition or that of any other person, 2) (he/she) knew it was false, and 3) (he/she) intended that the statement would be relied upon in procuring the issuance of a credit card.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of false statement to procure the issuance of a credit card, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.2-3 Credit Card Theft -- § 53a-128c (a)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with credit card theft. The statute defining this offense reads in pertinent part as follows:

any person who *<insert as appropriate:>*

- takes a credit card from the person, possession, custody or control of another without the consent of the cardholder or of the issuer,
- receives a credit card with knowledge that the credit card has been taken from the person, possession, custody, or control of another, without consent of the cardholder or issuer, with the intent to use it or to sell it, or to transfer it to any person other than the issuer or the cardholder is guilty of credit card theft.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Took or received a credit card

The first element is that the defendant *<insert as appropriate:>*

- took a credit card from the person, possession, custody or control of another.
- received a credit card, with knowledge that the credit card had been taken from the person, possession, custody, or control of another. "Received" means to have acquired possession, custody or control.

"Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit.

[*<If charged with taking:>* The defendant is charged with taking a credit card by (larceny / trespassory taking / larceny by trick / embezzlement / obtaining property by false pretense, false promise or extortion). *<Insert appropriate instruction for specific larcenous activity involved.>*<sup>1</sup>

### Element 2 - Without consent of cardholder

The second element is that the defendant did not have the consent of either the cardholder or the issuer. A person does an act "without the consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

### Element 3 - Intent to use, sell, or transfer

The third element is that the defendant intended to use the credit card or to sell it, or to transfer it to any person other than the issuer or the cardholder. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (took a credit card / received a credit card with knowledge that it had been taken), 2) the card owner had not consented, and 3) the defendant intended to use it, sell it, or transfer it to another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of credit card theft, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The statute provides that "[t]aking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick, embezzlement, or obtaining property by false pretense, false promise or extortion."

## 10.2-4 Credit Card Theft -- § 53a-128c (b)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with credit card theft. The statute defining this offense reads in pertinent part as follows:

any person who receives a credit card that (he/she) knows to have been (lost / mislaid / delivered under a mistake as to the identity or address of the cardholder), and who retains possession, custody or control thereof with intent to use it or to sell it or to transfer it to any person other than the issuer or the cardholder, is guilty of credit card theft.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Received a credit card**

The first element is that the defendant received a credit card. "Received" means to have acquired possession, custody or control. "Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit.

### **Element 2 - Knowledge**

The second element is that the defendant knew that the card was (lost / mislaid / delivered under a mistake as to the identity or address of the cardholder). A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Element 3 - Retained possession**

The third element is that the defendant retained possession, custody or control of the card with the intent to use it or to sell it or to transfer it to any person other than the issuer or the cardholder. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) received a credit card, 2) knew that the card was lost, mislaid, or mistakenly delivered, and 3) retained possession of the card with the intent to use it, sell it, or transfer it to another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of credit card theft, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.2-5 Illegal Transfer of a Credit Card -- § 53a-128c (c)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the illegal transfer of a credit card. The statute defining this offense imposes punishment on any person other than the issuer who sells a credit card or buys a credit card from a person other than the issuer.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Bought or sold a credit card**

The first element is that the defendant (sold / bought) a credit card. "Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit.

### **Element 2 - Not an issuer**

The second element is that (the defendant / the person from whom the card was bought) is not the issuer of the credit card. "Issuer" means the person or entity issuing a credit card, or a duly authorized agent.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (sold / bought) a credit card, and 2) (the defendant / the person from whom the card was bought) is not the issuer of the credit card.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the illegal transfer of a credit card, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.2-6 Obtaining a Credit Card by Fraud -- § 53a-128c (d)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with obtaining a credit card by fraud. The statute defining this offense imposes punishment on any person who, with intent to defraud the issuer, a participating party, or a person providing money, goods, services or anything else of value, or any other person, obtains control over a credit card as security for debt.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Obtained control over credit card

The first element is that the defendant obtained control over a credit card as security for a debt. "Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit. *<Insert allegations as to the use of the card as security for a debt.>*

### Element 2 - Intent to defraud

The second element is that the defendant intended to defraud (the issuer / a participating party / a person providing money, goods, services or anything else of value / any person). *<Insert appropriate definitions:>*

- "Issuer" means the person or entity issuing a credit card, or a duly authorized agent.
- "Participating party" means any person or any duly authorized agent of such person obligated by contract to acquire from another person providing money, goods, services or anything else of value, a sales slip, sales draft or instrument for the payment of money, evidencing a credit card transaction, and from whom, directly or indirectly, the issuer is obligated by contract to acquire such sales slip, sales draft, instrument for the payment of money and the like.

*<See Intent to Defraud, Instruction 2.3-6.>*

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) obtained control over a credit card as security for a debt, and 2) intended to defraud *<identify person or company allegedly defrauded>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of obtaining a credit card by fraud, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.2-7 Receiving Illegally Obtained Credit Cards -- § 53a-128c (e)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with receiving illegally obtained credit cards. The statute defining this offense imposes punishment on

any person, other than the issuer, who, during any twelve-month period, receives credit cards issued in the names of two or more persons which (he/she) has reason to know were taken or retained under circumstances which constitute *<insert as appropriate:>*

- credit card theft.<sup>1</sup>
- making a false statement to procure issuance of a credit card.<sup>2</sup>
- the illegal transfer of a credit card.<sup>3</sup>
- obtaining a credit card by fraud.<sup>4</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Received credit cards

The first element is that during a twelve-month period, the defendant received credit cards in the names of two or more persons, and the defendant is not the issuer of the cards. "Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit. "Issuer" means the person or entity issuing a credit card, or a duly authorized agent. "Receives" means acquiring possession, custody or control.

### Element 2 - Knowledge that cards were obtained illegally

The second element is that the defendant had reason to know that the credit cards were taken or retained under circumstances constituting *<insert as appropriate:>*

- credit card theft. *<See Credit Card Theft, Instruction 10.2-3, or Credit Card Theft, Instruction 10.2-4.>*
- making a false statement to procure issuance of a credit card. *<See False Statement to Procure Issuance of a Credit Card, Instruction 10.2-2.>*
- the illegal transfer of a credit card. *<See Illegal Transfer of a Credit Card, Instruction 10.2-5.>*
- obtaining a credit card by fraud. *<See Obtaining a Credit Card by Fraud, Instruction 10.2-6.>*

A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. *<See Knowledge, Instruction 2.3-3.>*

## **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) received credit cards in the names of two or more persons within a twelve-month period, and 2) knew or had reason to know that the credit cards had been obtained by *<insert specific allegations>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of receiving fraudulently obtained credit cards, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Credit card theft is defined by General Statutes § 53a-128c (a) and (b).

<sup>2</sup> As defined in General Statutes § 53a-128b.

<sup>3</sup> As defined in General Statutes § 53a-128c (c).

<sup>4</sup> As defined in General Statutes § 53a-128c (d).

## 10.2-8 Credit Card Forgery -- § 53a-128c (f)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with credit card forgery. The statute defining this offense reads in pertinent part as follows:

any person who, with intent to defraud a purported issuer, a participating party, or a person providing money, goods, services or anything else of value, or any other person, (falsely makes / falsely embosses / utters) a purported credit card is guilty of credit card forgery.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Falsely made, embossed or uttered a credit card**

The first element is that the defendant (falsely made / falsely embossed / uttered) a purported credit card. "Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit.

<Insert as appropriate:>

- A person "falsely makes" a credit card when (he/she) makes or draws, in whole or in part, a device or instrument that purports to be the credit card of a named issuer but that is not such a credit card because the issuer did not authorize the making or drawing, or when such person so alters a credit card that was validly issued.<sup>1</sup>
- A person "falsely embosses" a credit card when, without authorization of the named issuer, (he/she) completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.<sup>2</sup>
- A person "utters" a credit card when (he/she) offers or tenders or otherwise attempts to pass such a credit card, or when (he/she) uses or attempts to use such a credit card.

### **Element 2 - Intent to defraud**

The second element is that defendant intended to defraud a purported issuer, a participating party, or a person providing money, goods, services, or anything else of value, or any other person. <See *Intent to Defraud, Instruction 2.3-6.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) falsely (made / embossed / uttered) a purported credit card, and 2) intended to defraud a purported issuer, a participating party, or a person providing money, goods, services, or anything else of value, or any other person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of credit card forgery, then you shall find the defendant guilty. On the other hand,

if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Defined in General Statutes § 53a-128c (f).

<sup>2</sup> Id.

## 10.2-9 Credit Card Forgery -- § 53a-128c (g)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with credit card forgery. The statute defining this offense imposes punishment on

any person other than the cardholder or any person authorized by (him/her) who, with intent to defraud the issuer, a participating party, or a person providing money, goods, services or anything else of value, or any other person, signs a credit card.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Signed credit card**

The first element is that the defendant signed a credit card, and was not the cardholder or anyone authorized by the cardholder. "Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit.

### **Element 2 - Intent to defraud**

The second element is that the defendant intended to defraud the issuer, a participating party, or a person providing money, goods, services or anything else of value, or any other person. <See *Intent to Defraud, Instruction 2.3-6.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) signed a credit card, and 2) intended to defraud a purported issuer, a participating party, or a person providing money, goods, services, or anything else of value, or any other person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of credit card forgery, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.2-10 Illegal Use of a Credit Card -- § 53a-128d (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the illegal use of a credit card. The statute defining this offense imposes punishment on

any person who, with intent to defraud the issuer, a participating party, or a person providing money, goods, services or anything else of value, or any other person, uses for the purpose of obtaining money, goods, services or anything else of value a credit card (obtained or retained by the giving of false information / which (he/she) knows is (forged / expired / revoked)).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Used a credit card

The first element is that the defendant used, for the purpose of obtaining money, goods, services or anything else of value, a credit card *<insert as appropriate:>*

- obtained or retained by the giving of false information.<sup>1</sup>
- which (he/she) knew was (forged / expired / revoked).

"Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit.

*[<If allegations are that credit card was obtained or retained by the giving of false information, see False Statement to Procure Issuance of a Credit Card, Instruction 10.2-2.>]*

*[<If allegations are that the credit card was forged, expired, or revoked, insert appropriate definitions:>]*

- A "forged" credit card means a card falsely made or falsely embossed or the uttering of such a card.<sup>2</sup>
  - A person "falsely makes" a credit card when (he/she) makes or draws, in whole or in part, a device or instrument that purports to be the credit card of a named issuer but that is not such a credit card because the issuer did not authorize the making or drawing, or when such person so alters a credit card that was validly issued.
  - A person "falsely embosses" a credit card when, without authorization of the named issuer, (he/she) completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.
  - A person "utters" a credit card when (he/she) offers or tenders or otherwise attempts to pass such a credit card, or when (he/she) uses or attempts to use such a credit card.
- An "expired credit card" means a credit card that is no longer valid because the term shown on it has elapsed.
- A "revoked credit card" means a credit card that is no longer valid because permission to use it has been suspended or terminated by the issuer. [*<If evidence regarding mailing*

*of revocation notice has been admitted:*> Knowledge of revocation shall be presumed to have been received by a cardholder four days after it has been mailed to (him/her), at the address set forth on the credit card or at (his/her) last known address, by registered or certified mail, return receipt requested, and, if the address is more than five hundred miles from the place of mailing, by air mail. If the address is located outside of the United States, Puerto Rico, the Virgin Islands, the Canal Zone or Canada, notice shall be presumed to have been received ten days after mailing by registered or certified mail. This means that you may find, but do not have to, that the defendant, if (he/she) was the cardholder, knew that the card had been revoked if you find that the notice was mailed as I just stated.]

A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Element 2 - Intent to defraud**

The second element is that the defendant intended to defraud the issuer, a participating party, or a person providing money, goods, services or anything else of value, or any other person. <See *Intent to Defraud, Instruction 2.3-6.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant used, for the purpose of obtaining money, goods, services or anything else of value, a credit card that had been <insert specific allegations regarding the credit card>, and 2) (he/she) intended to defraud another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of illegal use of a credit card, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> In violation of General Statutes § 53a-128b.

<sup>2</sup> See Credit Card Forgery, Instruction 10.2-8, and Credit Card Forgery, Instruction 10.2-9.

### ***Commentary***

#### ***Sentence enhancer***

General Statutes § 53a-128d provides that this offense is a class D felony, pursuant to General Statutes § 53a-128i (a), if the value of the money, goods, services or other things of value obtained in violation of this subsection exceeds \$500 in any six-month period; it is otherwise a class A misdemeanor, pursuant to General Statutes § 53a-128i (b). The jury must find this fact beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 10.2-11 Illegal Use of a Credit Card -- § 53a-128d (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the illegal use of a credit card. The statute defining this offense imposes punishment on

any person who, with intent to defraud the issuer, a participating party, or a person providing money, goods, services or anything else of value, or any other person, obtains money, goods, services or anything else of value by representing without the consent of the cardholder that (he/she) is the holder of a specified card or by representing that (he/she) is the holder of a card and such card has not in fact been issued.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Used a credit card**

The first element is that the defendant obtained money, goods, services, or anything else of value by representing, without the consent of the cardholder, that (he/she) was the holder of a specified card, or by representing that (he/she) was the holder of a card and such card had not in fact been issued.

"Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit. A person does an act "without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

### **Element 2 - Intent to defraud**

The second element is that the defendant intended to defraud the issuer, a participating party, or a person providing money, goods, services or anything else of value, or any other person.

"Participating party" means any person or any duly authorized agent of such person obligated by contract to acquire from another person providing money, goods, services or anything else of value, a sales slip, sales draft or instrument for the payment of money, evidencing a credit card transaction, and from whom, directly or indirectly, the issuer is obligated by contract to acquire such sales slip, sales draft, instrument for the payment of money and the like.

<See *Intent to Defraud, Instruction 2.3-6.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant <insert *specific allegations regarding the use of the credit card*>, and 2) (he/she) intended to defraud another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of illegal use of a credit card, then you shall find the defendant guilty. On the other hand, if you

unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

*Commentary*

*Sentence enhancer*

General Statutes § 53a-128d provides that this offense is a class D felony, pursuant to General Statutes § 53a-128i (a), if the value of the money, goods, services or other things of value obtained in violation of this subsection exceeds \$500 in any six-month period; it is otherwise a class A misdemeanor, pursuant to General Statutes § 53a-128i (b). The jury must find this fact beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 10.2-12 Illegal Use of a Credit Card -- § 53a-128d (3)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the illegal use of a credit card. The statute defining this offense imposes punishment on

any person who, with intent to defraud the issuer, a participating party, or a person providing money, goods, services or anything else of value, or any other person, uses a credit card (obtained or retained by theft / which (he/she) knows is (forged / expired / revoked)), as authority or identification to cash or to attempt to cash or otherwise to negotiate or transfer or to attempt to negotiate or transfer any check or other order for the payment of money, whether or not negotiable, if such negotiation or transfer or attempt to negotiate or transfer would constitute a violation of the statute penalizing the issuance of a bad check.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Used a credit card

The first element is that the defendant used a credit card *<insert as appropriate:>*

- obtained or retained by the giving of false information<sup>1</sup>
- which (he/she) knew was (forged / expired / revoked)

as authority or identification to cash or attempt to cash or otherwise negotiate, transfer or to attempt to negotiate or transfer any check or other order for the payment of money, whether or not negotiable, if such negotiation or transfer or attempt to negotiate or transfer would constitute a violation of the statute penalizing issuing or cashing a bad check.

"Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit.

*[<If allegations are that credit card was obtained or retained by the giving of false information, see False Statement to Procure Issuance of a Credit Card, Instruction 10.2-2.>]*

*[<If allegations are that the credit card was forged, expired, or revoked, insert appropriate definitions:>]*

- A "forged" credit card means a card falsely made or falsely embossed or the uttering of such a card.<sup>2</sup>
- A person "falsely makes" a credit card when (he/she) makes or draws, in whole or in part, a device or instrument that purports to be the credit card of a named issuer but that is not such a credit card because the issuer did not authorize the making or drawing, or when such person so alters a credit card that was validly issued.
- A person "falsely embosses" a credit card when, without authorization of the named issuer, (he/she) completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

- A person "utters" a credit card when (he/she) offers or tenders or otherwise attempts to pass such a credit card, or when (he/she) uses or attempts to use such a credit card.
- An "expired credit card" means a credit card that is no longer valid because the term shown on it has elapsed.
- A "revoked credit card" means a credit card that is no longer valid because permission to use it has been suspended or terminated by the issuer. [*<If evidence regarding mailing of revocation notice has been admitted:>* Knowledge of revocation shall be presumed to have been received by a cardholder four days after it has been mailed to (him/her), at the address set forth on the credit card or at (his/her) last known address, by registered or certified mail, return receipt requested, and, if the address is more than five hundred miles from the place of mailing, by air mail. If the address is located outside of the United States, Puerto Rico, the Virgin Islands, the Canal Zone or Canada, notice shall be presumed to have been received ten days after mailing by registered or certified mail. This means that you may find, but do not have to, that the defendant, if (he/she) was the cardholder, knew that the card had been revoked if you find that the notice was mailed as I just stated.]

*<See Issuing a Bad Check, Instruction 10.2-1.>*

### **Element 2 - Intent to defraud**

The second element is that the defendant intended to defraud the issuer, a participating party, or a person providing money, goods, services or anything else of value, or any other person.

"Participating party" means any person or any duly authorized agent of such person obligated by contract to acquire from another person providing money, goods, services or anything else of value, a sales slip, sales draft or instrument for the payment of money, evidencing a credit card transaction, and from whom, directly or indirectly, the issuer is obligated by contract to acquire such sales slip, sales draft, instrument for the payment of money and the like.

*<See Intent to Defraud, Instruction 2.3-6.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant *<insert specific allegations regarding the use of the credit card>*, and 2) (he/she) intended to defraud another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of illegal use of a credit card, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> In violation of General Statutes § 53a-128b.

<sup>2</sup> See Credit Card Forgery, Instruction 10.2-8, and Credit Card Forgery, Instruction 10.2-9.

*Commentary*

*Sentence enhancer*

General Statutes § 53a-128d provides that this offense is a class D felony, pursuant to General Statutes § 53a-128i (a), if the value of the money, goods, services or other things of value obtained in violation of this subsection exceeds \$500 in any six-month period; it is otherwise a class A misdemeanor, pursuant to General Statutes § 53a-128i (b). The jury must find this fact beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 10.2-13 Illegal Furnishing of Money, Goods or Services on a Credit Card -- § 53a-128e (a)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the illegal furnishing of money, goods or services on a credit card. The statute defining this offense imposes punishment on

any person who is authorized by an issuer or a participating party to furnish money, goods, services or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer, or participating party, the cardholder, or any other person, furnishes money, goods, services or anything else of value upon presentation of a credit card <insert as appropriate:>

- obtained or retained illegally.
- which (he/she) knows is (forged / expired / revoked).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Authorized

The first element is that the defendant [, or an agent or employee of the defendant,] was authorized by an issuer or a participating party to furnish money, goods, services or anything else of value upon presentation of a credit card by the cardholder.

"Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit.

"Participating party" means any person or any duly authorized agent of such person obligated by contract to acquire from another person providing money, goods, services or anything else of value, a sales slip, sales draft or instrument for the payment of money, evidencing a credit card transaction, and from whom, directly or indirectly, the issuer is obligated by contract to acquire such sales slip, sales draft, instrument for the payment of money and the like.

### Element 2 - Furnished money, goods, services

The second element is that the defendant [, or the defendant's agent or employee,] furnished money, goods services or anything else of value upon presentation of a credit card <insert as appropriate:>

- obtained or retained illegally.<sup>1</sup>
- which (he/she) knew was (forged / expired / revoked).

[<If allegations are that the credit card was obtained or retained illegally, instruct on the appropriate violation of § 53a-127c. See Credit Card Theft, Instruction 10.2-3, Credit Card Theft, Instruction 10.2-4, Illegal Transfer of a Credit Card, Instruction 10.2-5, Obtaining a Credit Card by Fraud, Instruction 10.2-6, Receiving Illegally Obtained Credit Cards, Instruction 10.2-7, Credit Card Forgery, Instruction 10.2-8, Credit Card Forgery, Instruction 10.2-9.>]

[<If allegations are that the credit was forged, expired or revoked, insert appropriate definition:>:

- A "forged" credit card means a card falsely made or falsely embossed or the uttering of such a card.<sup>2</sup>
- A person "falsely makes" a credit card when (he/she) makes or draws, in whole or in part, a device or instrument that purports to be the credit card of a named issuer but that is not such a credit card because the issuer did not authorize the making or drawing, or when such person so alters a credit card that was validly issued.
- A person "falsely embosses" a credit card when, without authorization of the named issuer, (he/she) completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.
- A person "utters" a credit card when (he/she) offers or tenders or otherwise attempts to pass such a credit card, or when (he/she) uses or attempts to use such a credit card.
- An "expired credit card" means a credit card that is no longer valid because the term shown on it has elapsed.
- A "revoked credit card" means a credit card that is no longer valid because permission to use it has been suspended or terminated by the issuer.]

A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

### **Element 3 - Intent to defraud**

The third element is that the defendant [, or the defendant's agent or employee,] furnished the money, goods, services or anything else of value with the intent to defraud the issuer, a participating party, the cardholder or any other person. <See Intent to Defraud, Instruction 2.3-6.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was authorized to furnish goods, 2) (he/she) furnished goods on presentation of a credit card (he/she) knew to be <insert allegations>, and 3) (he/she) intended to defraud another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of illegal furnishing money, goods or services on a credit card, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> In violation of General Statutes § 53a-128c.

<sup>2</sup> See Credit Card Forgery, Instruction 10.2-8, and Credit Card Forgery, Instruction 10.2-9.

*Commentary*

*Sentence enhancer*

General Statutes § 53a-128d provides that this offense is a class D felony, pursuant to General Statutes § 53a-128i (a), if the value of the money, goods, services or other things of value obtained in violation of this subsection exceeds \$500 in any six-month period; it is otherwise a class A misdemeanor, pursuant to General Statutes § 53a-128i (b). The jury must find this fact beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 10.2-14 Illegal Furnishing of Money, Goods or Services on a Credit Card -- § 53a-128e (b)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the illegal furnishing of money, goods or services on a credit card. The statute defining this offense imposes punishment on any person who is authorized by an issuer or a participating party to furnish money, goods, services or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer, a participating party, the cardholder, or any other person, fails to furnish money, goods, services or anything else of value which (he/she) represents in writing to the issuer or participating party that (he/she) has furnished.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Authorized**

The first element is that the defendant [, or an agent or employee of the defendant,] was authorized by an issuer or a participating party to furnish money, goods, services or anything else of value upon presentation of a credit card by the cardholder.

"Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit.

"Participating party" means any person or any duly authorized agent of such person obligated by contract to acquire from another person providing money, goods, services or anything else of value, a sales slip, sales draft or instrument for the payment of money, evidencing a credit card transaction, and from whom, directly or indirectly, the issuer is obligated by contract to acquire such sales slip, sales draft, instrument for the payment of money and the like.

### **Element 2 - Failed to furnish**

The second element is that the defendant [, or the defendant's agent or employee,] failed to furnish money, goods, services or anything else of value.

### **Element 3 - Representation of furnishing**

The third element is that the defendant [, or the defendant's agent or employee,] represented in writing to the issuer or participating party that (he/she) furnished the money, goods, services or anything else of value.

### **Element 4 - Intent to defraud**

The fourth element is that the defendant [, or the defendant's agent or employee,] intended to defraud the issuer, a participating party, the cardholder or any other person. <See *Intent to Defraud, Instruction 2.3-6.*>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was authorized to furnish goods, 2) (he/she) failed to furnish goods, 3) (he/she) represented that the goods had been furnished, and 4) the defendant intended to defraud another person.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of illegal furnishing of money, goods, or services on a credit card, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

***Commentary******Sentence enhancer***

General Statutes § 53a-128d provides that this offense is a class D felony, pursuant to General Statutes § 53a-128i (a), if the value of the money, goods, services or other things of value obtained in violation of this subsection exceeds \$500 in any six-month period; it is otherwise a class A misdemeanor, pursuant to General Statutes § 53a-128i (b). The jury must find this fact beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 10.2-15 Unlawful Completion of a Credit Card -- § 53a-128f

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the unlawful completion of a credit card. The statute defining this offense imposes punishment on any person, other than the cardholder, having under (his/her) possession, custody or control two or more incomplete credit cards, or possessing a purported distinctive element of a credit card, with intent to complete such incomplete credit cards without the consent of the issuer.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Possession of incomplete cards**

The first element is that the defendant, who is not the cardholder, possessed two or more incomplete credit cards, or a purported distinctive element of a credit card.

"Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services or anything else of value on credit. "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

A credit card is "incomplete" if part of the matter other than the signature of the cardholder, which an issuer, or any issuer in a group of issuers utilizing a common distinctive element or elements in credit cards issued by all members of such group, requires to appear on the credit card, before it can be used by a cardholder, has not yet been stamped, embossed, imprinted or written on it.<sup>1</sup>

A "distinctive element" of a credit card is any material or component used in the fabrication of credit cards, which, by virtue of such element's chemical or physical composition, color or design, is unique to the credit cards issued by a particular issuer or group of issuers utilizing a common distinctive element or elements in credit cards issued by all members of such group.<sup>2</sup>

### **Element 2 - Intent to complete**

The second element is that the defendant intended to complete such incomplete credit cards. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 3 - Without consent of issuer**

The third element is that the defendant did not have the consent of the issuer. "Issuer" means the person or entity issuing a credit card, or a duly authorized agent. A person does an act

"without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant possessed two or more incomplete credit cards, or a purported distinctive element of a credit card, 2) (he/she) had the intent to complete the cards, and 3) (he/she) did not have the consent of an issuer.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of unlawful completion of a credit card, then you shall find the defendant guilty.

On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Defined in General Statutes § 53a-128f.

<sup>2</sup> Id.

## 10.2-16 Unlawful Possession of Items Used in the Production of Credit Cards -- § 53a-128f

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the unlawful possession of items used in the production of credit cards. The statute defining this offense imposes punishment on a person having under (his/her) possession, custody or control, with knowledge of its character, a distinctive element of any credit card or any machinery, plates or any contrivance designed to produce or reproduce instruments purporting to be the credit cards of an issuer, or of any issuer in a group of issuers utilizing a common distinctive element or elements in credit cards issued by all members of such group, who has not consented to the production or reproduction of such cards.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Possession of distinctive element or machinery**

The first element is that the defendant possessed or had under (his/her) custody or control, a distinctive element of any credit card or any machinery, plates or any contrivance designed to produce or reproduce instruments purporting to be credit cards. <See *Possession, Instruction 2.11-1.*>

### **Element 2 - Knowledge**

The second element is that the defendant knew the character of these items. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Element 3 - Without consent**

The third element is that the defendant did not have the consent of an issuer to produce or reproduce cards by the issuer or of any issuer in a group of issuers utilizing a common distinctive element or elements in credit cards issued by all members of such group. "Issuer" means the person or entity issuing a credit card, or a duly authorized agent. A person does an act "without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant possessed a distinctive element of any credit card or any machinery, plates or any contrivance designed to produce or reproduce instruments purporting to be credit cards, 2) (he/she) had knowledge of the nature of the items, and 3) (he/she) did not have the consent of an issuer.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the unlawful possession of items used in the production of credit cards, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has

failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.2-17 Receipt of Money, Goods or Services Obtained by Illegal Use of a Credit Card -- § 53a-128g

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with receiving money, goods or services obtained by the illegal use of a credit card. The statute defining this offense imposes punishment on any person who receives money, goods, services or anything else of value obtained through the illegal use of a credit card, knowing or believing the same to have been so obtained.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Received money, goods or services**

The first element is that the defendant received money, goods, services or anything else of value obtained by the illegal use of a credit card.<sup>1</sup> <See *Illegal Use of a Credit Card, Instruction 10.2-10, Illegal Use of a Credit Card, Instruction 10.2-11, and Illegal Use of a Credit Card, Instruction 10.2-12.*>

### **Element 2 - Knowledge**

The second element is that the defendant knew or believed that the money, goods, services or anything else of value had been obtained by the illegal use of a credit card. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

[<Include if appropriate:> Any person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company that was acquired by the illegal use of a credit card without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of said section. This means that you may find, but are not required to, that the defendant knew that the ticket had been acquired through the illegal use of a credit card if you find that (he/she) did not make a reasonable inquiry into the person's right to use the card.]

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant received money, goods, services or anything else of value obtained by the illegal use of a credit card, and 2) (he/she) knew that the money, goods, services had been obtained by the illegal use of a credit card.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the receipt of money, goods, or services obtained by illegal use of a credit card, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> In violation of General Statutes § 53a-128d.

## 10.2-18 Extortionate Extension of Credit -- § 53-390

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with (making / conspiring to make) an extortionate extension of credit. The statute defining this offense imposes punishment on any person who makes any extortionate extension of credit, or conspires to do so.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt that the defendant (made /conspired to make) an extortionate extension of credit.

An "extortionate extension of credit" means any extension of credit with respect to which it is the understanding of the creditor and the debtor, at the time such extension of credit is made, that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person.

"To extend credit" means to make or renew any loans, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

"Credit" is the time that a seller gives the buyer to make the payment that is due.

"Creditor," with reference to any given extension of credit, refers to any person making such extension of credit, or to any person claiming by, under or through such person.

"Debtor," with reference to any given extension of credit, refers to any person to whom such extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

"Repayment" of any extension of credit includes the repayment, satisfaction or discharge, in whole or in part, of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with such extension of credit.

*<If charged with conspiring to make an extortionate extension of credit, see Conspiracy, Instruction 3.3-1.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant (made / conspired to make) an extortionate extension of credit.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the extortionate extension of credit, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### *Commentary*

Note the following evidentiary provisions found in General Statutes § 53-390 (b) and (c): If the state proves beyond a reasonable doubt that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate; but this subsection is nonexclusive and in no way limits the effect or applicability of subsection (a):

(1) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor (A) in the jurisdiction within which the debtor, if a natural person, resided or (B) in every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business at the time the extension of credit was made;

(2) The extension of credit was made at a rate of interest in excess of the rate permitted under title 37 calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal;

(3) At the time the extension of credit was made, the debtor reasonably believed that either (A) one or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the non-repayment thereof had been punished by extortionate means; or (B) the creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the non-repayment thereof;

or

(4) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceed ten dollars.

(c) In any prosecution under this section, if evidence has been introduced tending to show the existence of any of the circumstances described in subdivision (1) or (2) of subsection (b), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then, for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may, in its discretion, allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension.

## 10.2-19 Advancing Money for Extortionate Extension of Credit -- § 53-391

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with advancing money or property to be used in an extortionate extension of credit. The statute defining this offense imposes punishment on any person who wilfully advances money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit sharing agreement, or otherwise, to any person, with reasonable grounds to believe that it is the intention of such person to use the money or property so advanced directly or indirectly for the purpose of making extortionate extensions of credit.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Advanced money or property**

The first element is that the defendant advanced money or property to another person. The advancement of money or property can be in the form of a gift, a loan, an investment, pursuant to a partnership or profit sharing agreement, or otherwise.

### **Element 2 - Wilfully**

The second element is that the defendant acted wilfully. To act "wilfully" means to act intentionally or deliberately.

### **Element 3 - Belief**

The third element is that the defendant had reasonable grounds to believe that it was the intention of the other person to use the money or property for the purpose of making extortionate extensions of credit. A "reasonable ground to believe" means that a reasonable person in the defendant's situation, viewing the circumstances from the defendant's point of view, would have shared that belief.

An "extortionate extension of credit" means any extension of credit with respect to which it is the understanding of the creditor and the debtor, at the time such extension of credit is made, that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person.

"To extend credit" means to make or renew any loans, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

"Credit" is the time that a seller gives the buyer to make the payment that is due.

"Creditor," with reference to any given extension of credit, refers to any person making such extension of credit, or to any person claiming by, under or through such person.

"Debtor," with reference to any given extension of credit, refers to any person to whom such extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

"Repayment" of any extension of credit includes the repayment, satisfaction or discharge, in whole or in part, of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with such extension of credit.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant advanced money or property to another person, 2) (he/she) did so wilfully, and 3) (he/she) had reasonable grounds to believe that it was the intention of the other person to use the money or property for the purpose of making extortionate extensions of credit.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of advancing money for the extortionate extension of credit, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.2-20 Participation or Conspiracy in Use of Extortionate Means -- § 53-392

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with (participating / conspiring to participate) in the use of extortionate means. The statute defining this offense imposes punishment on any person who knowingly participates in any way, or conspires to do so, in the use of any extortionate means *<insert as appropriate:>*

- to collect or attempt to collect any extension of credit.
- to punish any person for the non-repayment of any extension of credit.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Participated in the use of extortionate means**

The first element is that the defendant (participated / conspired to participate) in any way in the use of any extortionate means.

An "extortionate means" means any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation or property of any person.

A participant is a person who, acting with the criminal intent necessary to commit the crime, knowingly and wilfully takes part in or shares in the commission of that crime.

*<If charged with conspiring to participate in the use of extortionate means, see Conspiracy, Instruction 3.3-1.>*

### **Element 2 - To collect**

The second element is that the extortionate means were used to (collect or attempt to collect / punish any person for the non-repayment of) any extension of credit.

"To collect an extension of credit" means to induce in any way any person to make repayment of an extension of credit.

"To extend credit" means to make or renew any loans, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

"Credit" is the time that a seller gives the buyer to make the payment that is due.

"Repayment" of any extension of credit includes the repayment, satisfaction or discharge, in whole or in part, of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with such extension of credit.

**Element 3 - Knowingly<sup>1</sup>**

The third element is that the defendant did so knowingly. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (participated / conspired to participate) in any way in the use of any extortionate means, 2) the extortionate means were used to (collect or attempt to collect / punish any person for the non-repayment of) any extension of credit, and 3) the defendant did so knowingly.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of (participation / conspiracy) in the use of extortionate means, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> If the defendant is charged with conspiracy to participate in the use of extortionate means, it would be a specific intent crime.

## **10.3 IDENTITY THEFT**

**10.3-1 Identity Theft -- § 53a-129a, § 53a-129b, §  
53a-129c, and § 53a-129d**

**10.3-2 Trafficking in Personal Identifying  
Information -- § 53a-129e**

## 10.3-1 Identity Theft -- § 53a-129a, § 53a-129b, § 53a-129c, and § 53a-129d

Revised to May 10, 2012

**Note:** This instruction is for crimes committed on or after October 1, 2011. Public Acts 2011, No. 11-165, § 1, deleted the requirement that the money, credit, goods, services, property or medical information obtained be "in the name of the person." Because of numerous changes to the statutory definition of identity theft since 1999 when the crime was first established, there are two earlier versions of this instruction in the archive. For the instruction for crimes committed on or after October 1, 2009 and before October 1, 2011, see Instruction 10.3-1B. For the instruction for crimes committed before October 1, 2009, see Instruction 10.3-1A in the Archive.

**Note:** Identity theft is defined in § 53a-129a. The degree of identity theft depends on the value of the items obtained and the age of the victim. See § 53a-129b (first degree); § 53a-129c (second degree); § 53a-129d (third degree).

The defendant is charged [in count \_\_\_] with identity theft in the (first / second / third) degree. The statute defining this offense reads in pertinent part as follows:

a person commits identity theft when (he/she) knowingly uses personally identifying information of another person to obtain [or attempt to obtain] (money / credit / goods / services / property / medical information<sup>1</sup>) without the consent of such other person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Knowingly used personal identifying information of another person**

The first element is that the defendant knowingly used the personal identifying information of the complainant. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

"Personal identifying information" means any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation.

### **Element 2 - Obtained property**

The second element is that the defendant used the personal identifying information to obtain [or attempt to obtain] (money / credit / goods / services / property / medical information). The property that the defendant allegedly obtained is <identify the property>.

### **Element 3 - Without consent**

The third element is that the defendant did not have the consent of *<insert name of complainant>* to obtain this property in (his/her) name. A person does an act "without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

[*<Include element 4 only for first and second degree if the victim is under 60 years of age, and only for first degree if the victim is over 60 years of age.>*<sup>2</sup>

### **Element 4 - Value of property obtained**

- *<If victim is over 60 years of age:>* The fourth element is the value of the property obtained [or attempted to be obtained] by the defendant using *<insert name of complainant>*'s personal identifying information. The value must exceed \$5,000.
- *<If victim is under 60 years of age:>* The fourth element is the value of the property obtained [or attempted to be obtained] by the defendant using *<insert name of complainant>*'s personal identifying information. The value must exceed:
  - **First degree:** \$10,000.
  - **Second degree:** \$5,000.

For purposes of determining whether the state has proved the alleged degree of identity theft, the value of the (money / credit / goods / services / property) shall be ascertained as follows: "Value" here means the market value of the goods, services, or property at the time and place of the crime. "Market value" means the price that would, in all probability, result from fair negotiations between willing buyers and sellers at the time and place of the crime; the probability being based upon the evidence in the case.

If you can determine the price the property sold for at the time of the crime, then that is the controlling value. If the market value cannot be determined, then you should consider the replacement cost of the goods or services within a reasonable time after the crime.]

[*<Include element 5 only for first and second degree if the victim is over 60 years of age.>*

### **Element 5 - Age of complainant**

The fifth element is that the complainant was over 60 years of age at the time.]

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) knowingly used *<insert name of complainant>*'s personal identifying information, 2) obtained [or attempted to obtain] something of value, [and] 3) did so without the consent of *<insert name of complainant>*, [4] the value of the property exceeded (\$10,000 / \$5,000), and 5) the complainant was over 60 years of age.]

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of identity theft in the (first / second / third) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> Medical information would only be relevant to third degree, as it has no assignable dollar value.

<sup>2</sup> Pay close attention to the information if the offense has occurred over a period of time during which the victim turned 60 years old. The value of the property misappropriated after the victim turns 60 must be greater than \$5,000 to qualify for first degree. If the state is charging two counts, first degree for the theft after the victim turns 60, and second degree for the theft prior to the victim's birthday, there could be complicated issues of timing that would need to be explained to the jury.

## 10.3-2 Trafficking in Personal Identifying Information -- § 53a-129e

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with trafficking in personal identifying information. The statute defining this offense reads in pertinent part as follows:

a person is guilty of trafficking in personal identifying information when such person sells, gives or otherwise transfers personal identifying information of another person to a third person knowing that such information has been obtained without the authorization of such other person and that such third person intends to use such information for an unlawful purpose.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Sold/gave/transferred personal identifying information**

The first element is that the defendant (sold / gave / transferred) personal identifying information to another person. "Personal identifying information" means any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation.

### **Element 2 - Not authorized**

The second element is that the defendant knew that the information had been obtained without the authorization of the person whose identifying information it was. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Element 3 - For unlawful purpose**

The third element is that the defendant knew that the third person intended to use the information for unlawful purposes. An unlawful purpose is anything that is prohibited by law. <Insert *specific allegations.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (sold / gave / transferred) personal identifying information to another person, 2) (he/she) knew that the identifying information had been obtained without authorization, and 3) (he/she) knew that the person to whom the information was transferred intended to use it for unlawful purposes.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of trafficking in personal identifying information, then you shall find the defendant

guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **10.4 MONEY LAUNDERING**

### **10.4 Introduction to Money Laundering**

#### **10.4-1 Money Laundering in the First Degree -- § 53a-276**

#### **10.4-2 Money Laundering in the Second Degree -- § 53a-277**

#### **10.4-3 Money Laundering in the Third Degree -- § 53a-278**

#### **10.4-4 Money Laundering in the Fourth Degree -- § 53a-279**

## 10.4 Introduction to Money Laundering

Revised to December 1, 2007

General Statutes § 53a-282 contains the following presumptions in regard to money laundering crimes:

(a) A person who pays or receives substantially less than face value for one or more monetary instruments that are in fact derived from criminal activity is presumed to know that the monetary instrument or instruments are derived from criminal activity.

(b) A person who engages in a transaction involving one or more monetary instruments that are in fact derived from criminal activity, knowing or believing that such instrument or instruments, or the instrument or instruments or equivalent property exchanged for such criminally derived instruments, bear fictitious names, is presumed to know that the monetary instrument or instruments derived from criminal activity are in fact so derived.

(c) A person who fails to record or report a transaction involving one or more monetary instruments that are in fact derived from criminal activity, in circumstances under which such recording or reporting is either required by law or is in the ordinary course of business, is presumed to know that the monetary instrument or instruments are derived from criminal activity.

(d) A person who engages in a transaction involving one or more monetary instruments that are in fact derived from criminal activity, knowing that the physical condition or form of the monetary instrument or instruments makes it apparent that they are not the product of bona fide business or financial transactions, is presumed to know that they are derived from criminal activity.

## 10.4-1 Money Laundering in the First Degree -- § 53a-276

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with money laundering in the first degree. The statute defining this offense reads in pertinent part as follows:

a person commits the crime of money laundering in the first degree when (he/she) (exchanges / receives in exchange), in one or more transactions, one or more monetary instruments derived from criminal conduct constituting a felony and of a total value exceeding ten thousand dollars, for one or more other monetary instruments [or equivalent property,] with the intent <insert as appropriate:>

- to conceal that the exchanged monetary instrument or instruments (or equivalent property) is derived in whole or in part from the criminal sale of a controlled substance.
- that the exchange aid a person in the criminal sale of a controlled substance.
- that the exchange aid a person to profit in the sale of a controlled substance.
- that the exchange benefit a person from the criminal sale of a controlled substance.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Exchange of monetary instrument**

The first element is that the defendant (exchanged / received in exchange) any monetary instrument with a value exceeding ten thousand dollars for one or more other monetary instruments [or equivalent property].

"Monetary instrument" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, negotiable investment securities or negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

"Equivalent property" means property that may be readily converted into, or exchanged for, United States or foreign currency or coin, including gold, silver or platinum bullion or coins, diamonds, emeralds, rubies, sapphires or other precious stones, stamps or airline tickets, or any other property that is intended to be so converted or exchanged.

"Exchange," in addition to its ordinary meaning, means purchase, sale, loan, pledge, gift, transfer, delivery, deposit, withdrawal or extension of credit.

For purposes of determining whether the state has proved the value of the (monetary instruments / goods / services / property)<sup>1</sup>, value shall be ascertained as follows: "Value" here means the market value of the goods, services, or property at the time and place of the crime. "Market value" means the price that would, in all probability, result from fair negotiations between willing buyers and sellers at the time and place of the crime; the probability being based upon the evidence in the case.

If you can determine the price the property sold for at the time of the crime, then that is the controlling value. If the market value cannot be determined, then you should consider the replacement cost of the goods or services within a reasonable time after the crime.

Monetary instruments, except those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows: The value of an instrument constituting evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied. The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument. When the value of property or services cannot be satisfactorily ascertained pursuant to these standards, its value shall be deemed to be an amount less than fifty dollars.

### **Element 2 - Derived from felonious conduct**

The second element is that the defendant knew that at least one of the monetary instrument(s) (exchanged / received) was derived from criminal conduct constituting a felony.<sup>2</sup> "Felony" means a criminal offense committed in this state or another jurisdiction punishable by death or a term of imprisonment exceeding one year. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Element 3 - Intent**

The third element is that the defendant (exchanged / received) the monetary instrument(s) with the intent <insert as appropriate:>

- to conceal that the exchanged monetary instrument or instruments (or equivalent property) is derived in whole or in part from the criminal sale of a controlled substance.
- that the exchange aid a person in the criminal sale of a controlled substance.
- that the exchange aid a person to profit in the sale of a controlled substance.
- that the exchange benefit a person from the criminal sale of a controlled substance.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

<See *Sale or Possession with Intent to Sell a Controlled Substance by a Non-Drug-Dependent Person, Instruction 8.1-2.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (exchanged / received in exchange) a monetary instrument with a value exceeding ten thousand dollars for one or more monetary instruments [or equivalent property], 2) (he/she) knew that at least one of the monetary instruments (exchanged / received in exchange) by the defendant derived from criminal conduct constituting a felony, and 3) the defendant intended <insert specific allegations>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of money laundering in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The value of money or credit is equal to its face value, and no special instruction directing the jury on how to determine the value is necessary. The instruction on determining the value is derived from General Statutes § 53a-121.

<sup>2</sup> See Introduction to Money Laundering for statutory presumptions pertaining to knowledge of the derivation of the instruments from criminal activity.

## 10.4-2 Money Laundering in the Second Degree -- § 53a-277

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with money laundering in the second degree. The statute defining this offense reads in pertinent part as follows:

a person commits the crime of money laundering in the second degree when (he/she) (exchanges / receives in exchange), in one or more transactions, one or more monetary instruments derived from criminal conduct constituting a felony and of a total value exceeding ten thousand dollars, for one or more other monetary instruments [or equivalent property,] with the intent <insert as appropriate:>

- to conceal that the exchanged monetary instrument or instruments (or equivalent property) is derived from any criminal activity.
- that the exchange aid a person to commit criminal conduct.
- that the exchange aid a person to profit from criminal conduct.
- that the exchange benefit from criminal conduct.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Exchange of monetary instrument**

The first element is that the defendant (exchanged / received in exchange) a monetary instrument with a value exceeding ten thousand dollars for one or more other monetary instruments [or equivalent property].

"Monetary instrument" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, negotiable investment securities or negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

"Equivalent property" means property that may be readily converted into, or exchanged for, United States or foreign currency or coin, including gold, silver or platinum bullion or coins, diamonds, emeralds, rubies, sapphires or other precious stones, stamps or airline tickets, or any other property that is intended to be so converted or exchanged.

"Exchange," in addition to its ordinary meaning, means purchase, sale, loan, pledge, gift, transfer, delivery, deposit, withdrawal or extension of credit.

For purposes of determining whether the state has proved the value of the (monetary instruments / goods / services / property)<sup>1</sup>, value shall be ascertained as follows: "Value" here means the market value of the goods, services, or property at the time and place of the crime. "Market value" means the price that would, in all probability, result from fair negotiations between willing buyers and sellers at the time and place of the crime; the probability being based upon the evidence in the case.

If you can determine the price the property sold for at the time of the crime, then that is the controlling value. If the market value cannot be determined, then you should consider the replacement cost of the goods or services within a reasonable time after the crime.

Monetary instruments, except those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows: The value of an instrument constituting evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied. The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument. When the value of property or services cannot be satisfactorily ascertained pursuant to these standards, its value shall be deemed to be an amount less than fifty dollars.

### **Element 2 - Derived from felonious conduct**

The second element is that the defendant knew that at least one of the monetary instrument(s) (exchanged / received) was derived from criminal conduct constituting a felony.<sup>2</sup> "Felony" means a criminal offense committed in this state or another jurisdiction punishable by death or a term of imprisonment exceeding one year. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Element 3 - Intent**

The third element is that the defendant (exchanged / received) the monetary instrument(s) with the intent <insert as appropriate:>

- to conceal that the exchanged monetary instrument or instruments (or equivalent property) is derived from any criminal activity.
- that the exchange aid a person to commit criminal conduct.
- that the exchange aid a person to profit from criminal conduct.
- that the exchange benefit from criminal conduct.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

<See instructions on the alleged felonious criminal conduct.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (exchanged / received in exchange) a monetary instrument with a value exceeding ten thousand dollars for one or more monetary instruments [or equivalent property], 2) (he/she) knew that at least one of the monetary instruments (exchanged / received in exchange) by the defendant derived from criminal conduct constituting a felony, and 3) the defendant intended <insert specific allegations>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of money laundering in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The value of money or credit is equal to its face value, and no special instruction directing the jury on how to determine the value is necessary. The instruction on determining the value is derived from General Statutes § 53a-121.

<sup>2</sup> See Introduction to Money Laundering for statutory presumptions pertaining to knowledge of the derivation of the instruments from criminal activity.

## 10.4-3 Money Laundering in the Third Degree -- § 53a-278

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with money laundering in the third degree. The statute defining this offense reads in pertinent part as follows:

a person commits the crime of money laundering in the third degree when (he/she) (exchanges / receives in exchange), in one or more transactions, one or more monetary instruments derived from criminal conduct constituting a felony and of a total value exceeding ten thousand dollars, for one or more other monetary instruments [or equivalent property,] with the knowledge that the exchange will

<insert as appropriate:>

- conceal that the exchanged monetary instrument or instruments (or equivalent property) is derived from any criminal activity.
- aid a person to engage in criminal activity.
- aid a person to profit from criminal activity.
- aid a person to benefit from criminal activity.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Exchange of monetary instrument**

The first element is that the defendant (exchanged / received in exchange) any monetary instrument with a value exceeding ten thousand dollars for one or more other monetary instruments [or equivalent property].

"Monetary instrument" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, negotiable investment securities or negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

"Equivalent property" means property that may be readily converted into, or exchanged for, United States or foreign currency or coin, including gold, silver or platinum bullion or coins, diamonds, emeralds, rubies, sapphires or other precious stones, stamps or airline tickets, or any other property that is intended to be so converted or exchanged.

"Exchange," in addition to its ordinary meaning, means purchase, sale, loan, pledge, gift, transfer, delivery, deposit, withdrawal or extension of credit.

For purposes of determining whether the state has proved the value of the (monetary instruments / goods / services / property)<sup>1</sup>, "value" shall be ascertained as follows: "Value" here means the market value of the goods, services, or property at the time and place of the crime. "Market value" means the price that would, in all probability, result from fair negotiations between willing buyers and sellers at the time and place of the crime; the probability being based upon the evidence in the case.

If you can determine the price the property sold for at the time of the crime, then that is the controlling value. If the market value cannot be determined, then you should consider the replacement cost of the goods or services within a reasonable time after the crime.

Monetary instruments, except those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows: The value of an instrument constituting evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied. The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument. When the value of property or services cannot be satisfactorily ascertained pursuant to these standards, its value shall be deemed to be an amount less than fifty dollars.

### **Element 2 - Derived from felonious conduct**

The second element is that the defendant knew that at least one of the monetary instrument(s) (exchanged / received) was derived from criminal conduct constituting a felony.<sup>2</sup> "Felony" means a criminal offense committed in this state or another jurisdiction punishable by death or a term of imprisonment exceeding one year. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

### **Element 3 - Knowledge**

The third element is that the defendant (exchanged / received) the monetary instrument(s) with the knowledge that the exchange will <insert as appropriate:>

- conceal that the exchanged monetary instrument or instruments (or equivalent property) is derived from any criminal activity.
- aid a person to engage in criminal activity.
- aid a person to profit from criminal activity.
- aid a person to benefit from criminal activity.

<See Knowledge, Instruction 2.3-3.>

<See instructions on the alleged felonious criminal conduct.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (exchanged / received in exchange) a monetary instrument with a value exceeding ten thousand dollars for one or more monetary instruments [or equivalent property], 2) (he/she) knew that at least one of the monetary instruments (exchanged / received in exchange) by the defendant derived from felonious conduct, and 3) the defendant intended <insert specific allegations>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of money laundering in the third degree, then you shall find the defendant guilty.

On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> The value of money or credit is equal to its face value, and no special instruction directing the jury on how to determine the value is necessary. The instruction on determining the value is derived from General Statutes § 53a-121.

<sup>2</sup> See Introduction to Money Laundering for statutory presumptions pertaining to knowledge of the derivation of the instruments from criminal activity.

## 10.4-4 Money Laundering in the Fourth Degree -- § 53a-279

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with money laundering in the fourth degree. The statute defining this offense reads in pertinent part as follows:

a person commits the crime of money laundering in the fourth degree when (he/she) (exchanges / receives in exchange), in one or more transactions, one or more monetary instruments derived from criminal conduct constituting a felony, for one or more other monetary instruments [or equivalent property,] with the knowledge that the exchange will <insert as appropriate:>

- conceal that the exchanged monetary instrument or instruments (or equivalent property) is derived from any criminal activity.
- aid a person to engage in criminal activity.
- aid a person to profit from criminal activity.
- aid a person to benefit from criminal activity.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Exchange of monetary instrument**

The first element is that the defendant (exchanged / received in exchange) any monetary instrument for one or more other monetary instruments [or equivalent property].

"Monetary instrument" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, negotiable investment securities or negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

"Equivalent property" means property that may be readily converted into, or exchanged for, United States or foreign currency or coin, including gold, silver or platinum bullion or coins, diamonds, emeralds, rubies, sapphires or other precious stones, stamps or airline tickets, or any other property that is intended to be so converted or exchanged.

"Exchange," in addition to its ordinary meaning, means purchase, sale, loan, pledge, gift, transfer, delivery, deposit, withdrawal or extension of credit.

### **Element 2 - Derived from felonious conduct**

The second element is that the defendant knew that at least one of the monetary instrument(s) (exchanged / received) was derived from criminal conduct constituting a felony.<sup>1</sup> "Felony" means a criminal offense committed in this state or another jurisdiction punishable by death or a term of imprisonment exceeding one year. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

### **Element 3 - Knowledge**

The third element is that the defendant (exchanged / received) the monetary instrument(s) with the knowledge that the exchange will *<insert as appropriate:>*

- conceal that the exchanged monetary instrument or instruments (or equivalent property) is derived from any criminal activity.
- aid a person to engage in criminal activity.
- aid a person to profit from criminal activity.
- aid a person to benefit from criminal activity.

*<See Knowledge, Instruction 2.3-3.>*

*<See instructions on the alleged felonious criminal conduct.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (exchanged / received in exchange) a monetary instrument for one or more monetary instruments [or equivalent property], 2) (he/she) knew that at least one of the monetary instruments (exchanged / received in exchange) by the defendant derived from felonious conduct, and 3) the defendant intended *<insert specific allegations>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of money laundering in the fourth degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> See Introduction to Money Laundering for statutory presumptions pertaining to knowledge of the derivation of the instruments from criminal activity.

## **10.5 INTERNET CRIMES**

### **10.5 Introduction to Internet Crimes**

#### **10.5-1 Unauthorized Use of a Computer or Computer Network -- § 53-451 (b)**

#### **10.5-2 Unlawful Sale or Distribution of Certain Software -- § 53-451 (c)**

## 10.5 Introduction to Internet Crimes

Revised to December 1, 2007

Sections 53-451 through 53-454, Unauthorized Use of a Computer or Computer Network, created in 1999, is Connecticut's anti-SPAM legislation. While SPAM is widely understood now as unsolicited bulk email, it actually comprises a wide variety of activities that involve the unauthorized use of a computer system, principally the Internet, to send messages either in real time or in email with the intent to disrupt others' legitimate activities or to distribute or create falsified information or documents. The target of anti-SPAM legislation is fraud and deceptive commercial practices.

Because of the complexity of the technology used in committing these crimes, the instructions will have to be narrowly tailored to the facts of each case.

## 10.5-1 Unauthorized Use of a Computer or Computer Network -- § 53-451 (b)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the unauthorized use of a computer or computer network. The statute defining this crime reads in pertinent part as follows:

it shall be unlawful for any person to use a computer or computer network without authority and with the intent to *<insert appropriate subsection:>*

- § 53-451 (b) (1): temporarily or permanently remove, halt or otherwise disable any computer data, computer programs or computer software from a computer or computer network.
- § 53-451 (b) (2): cause a computer to malfunction, regardless of how long the malfunction persists.
- § 53-451 (b) (3): alter or erase any computer data, computer programs or computer software.
- § 53-451 (b) (4): effect the creation or alteration of a financial instrument or of an electronic transfer of funds.
- § 53-451 (b) (5): cause physical injury to the property of another.
- § 53-451 (b) (6): make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs or computer software residing in, communicated by or produced by a computer or computer network.
- § 53-451 (b) (7): falsify or forge electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

[*<Insert if appropriate:>* For the purposes of this statute, "person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official. *<Describe the status of the defendant as a person.>*]

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Used a computer or computer network**

The first element is that the defendant used a computer or computer network.

"Computer" means an electronic, magnetic or optical device or group of devices that, pursuant to a computer program, human instruction or permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on computer data and can communicate the results to another computer or to a person. "Computer" includes any connected or directly related device, equipment or facility that enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device.

"Computer network" means a set of related, remotely connected devices and any communications facilities including more than one computer with the capability to transmit data among them through the communications facilities.

For purposes of this offense, a person "uses" a computer or computer network when such person *<insert as appropriate:>*

- attempts to cause or causes a computer or computer network to perform or to stop performing computer operations. "Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and any combination thereof, and includes, but is not limited to, communication with, storage of data to or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A computer operation for a particular computer may also be any function for which that computer was generally designed.
- attempts to cause or causes the withholding or denial of the use of a computer, computer network, computer program, computer data or computer software to another user. "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, causes the computer to perform one or more computer operations. "Computer data" means any representation of information, knowledge, facts, concepts or instructions that is being prepared or has been prepared and is intended to be processed, is being processed or has been processed in a computer or computer network. Computer data may be in any form, whether readable only by a computer or only by a human or by either, including, but not limited to, computer printouts, magnetic storage media, punched cards or stored internally in the memory of the computer. "Computer software" means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.
- attempts to cause or causes another person to put false information into a computer.

### **Element 2 - Without authority**

The second element is that the defendant did not have the authority to *<insert specific allegations>*. A person is "without authority" when such person *<insert as appropriate:>*

- has no right or permission of the owner to use a computer or such person uses a computer in a manner exceeding such right or permission. "Owner" means an owner or lessee of a computer or a computer network, or an owner, lessee or licensee of computer data, computer programs or computer software.
- uses a computer, a computer network or the computer services of an electronic mail service provider to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider. "Electronic mail service provider" means any person who (A) is an intermediary in sending or receiving electronic mail, and (B) provides to end-users of electronic mail services the ability to send or receive electronic mail. Transmission of electronic mail from an organization to its members shall not be deemed to be unsolicited bulk electronic mail.

### **Element 3 - Intent**

The third element is that the defendant specifically intended to <insert as appropriate:>

- § 53-451 (b) (1): temporarily or permanently remove, halt or otherwise disable any computer data, computer programs or computer software from a computer or computer network.
- § 53-451 (b) (2): cause a computer to malfunction, regardless of how long the malfunction persists.
- § 53-451 (b) (3): alter or erase any computer data, computer programs or computer software.
- § 53-451 (b) (4): effect the creation or alteration of a financial instrument or of an electronic transfer of funds. "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computerized representation thereof.
- § 53-451 (b) (5): cause physical injury to the property of another. "Property" means: (A) Real property; (B) computers and computer networks; (C) financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are: (i) Tangible or intangible; (ii) in a format readable by humans or by a computer; (iii) in transit between computers or within a computer network or between any devices which comprise a computer; or (iv) located on any paper or in any device on which it is stored by a computer or by a human; and (D) computer services.
- § 53-451 (b) (6): make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs or computer software residing in, communicated by or produced by a computer or computer network.
- § 53-451 (b) (7): falsify or forge electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant used a computer or computer network, 2) (he/she) did not have authority to use the computer or computer network in the manner (he/she) did, and 3) (he/she) intended to <insert allegations of intent>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of unauthorized use of a computer or computer network, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## *Commentary*

### *Sentence Enhancer*

General Statutes § 53-451 (d) provides the penalties for this offense and includes two sentence enhancement provisions. While ordinarily a B misdemeanor, if the person's reckless disregard for the consequences of his or her actions causes damage to the property of another person in an amount exceeding \$2,500, the penalty is a class A misdemeanor, and if the person's malicious actions cause damage to the property of another person in an amount exceeding \$2,500, the penalty is a class D felony. The jury must find this fact beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

The interrogatory would have to include the following definitions:

- A person acts in "reckless disregard" of a risk when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that property damage will occur.
- To act "with malice" means to act with some improper or unjustifiable or harmful motive including, but not limited to, the desire to cause pain, injury or distress to another.

## 10.5-2 Unlawful Sale or Distribution of Certain Software -- § 53-451 (c)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with the unlawful sale or distribution of software designed to facilitate falsification of electronic mail transmission or routing information. The statute defining this offense reads in pertinent part as follows:

it shall be unlawful for any person to knowingly (sell / give / distribute / possess with the intent to sell, give or distribute) software that *<insert appropriate subsection:>*

- § 53-451 (c) (1): is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information.
- § 53-451 (c) (2): has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information.
- § 53-451 (c) (3): is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

### Element 1 - Sold, distributed, possessed software

The first element is that the defendant (sold / gave / distributed / possessed with the intent to sell, give, or distribute) software that *<insert as appropriate:>*

- § 53-451 (c) (1): is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information.
- § 53-451 (c) (2): has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information.
- § 53-451 (c) (3): is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

"Computer software" means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.

### Element 2 - Knowledge

The second element is that the defendant had knowledge of the character of the software. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. *<See Knowledge, Instruction 2.3-3.>*

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (sold / gave / distributed / possessed with the intent to sell, give, or distribute) software designed to facilitate

falsification of electronic mail transmission or routing information, and 2) the defendant knew the character of the software.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of the unlawful sale or distribution of certain software, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### *Commentary*

#### *Sentence Enhancer*

General Statutes § 53-451 (d) provides the penalties for this offense and includes two sentence enhancement provisions. While ordinarily a B misdemeanor, if the person's reckless disregard for the consequences of his or her actions causes damage to the property of another person in an amount exceeding \$2,500, the penalty is a class A misdemeanor, and if the person's malicious actions cause damage to the property of another person in an amount exceeding \$2,500, the penalty is a class D felony. The jury must find this fact beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

The interrogatory would have to include the following definitions:

- A person acts in "reckless disregard" of a risk when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that property damage will occur.
- To act "with malice" means to act with some improper or unjustifiable or harmful motive including, but not limited to, the desire to cause pain, injury or distress to another.

## **10.6 INSURANCE FRAUD**

**10.6-1 Defrauding Life or Accident Insurance  
Companies -- § 38a-287**

**10.6-2 Health Insurance Fraud -- § 53-442**

**10.6-3 Insurance Fraud -- § 53a-215**

## 10.6-1 Defrauding Life or Accident Insurance Companies -- § 38a-287

Revised to December 1, 2007 (modified August 1, 2008)

The defendant is charged [in count \_\_\_] with filing a fraudulent insurance claim. The statute defining this offense imposes punishment on any person who *<insert as appropriate:>*

- obtains or attempts to obtain, from any (life / accident) insurance company of this state, any money on any policy of insurance issued by it, by (falsely / fraudulently) representing the insured person as (dead / injured).
- fraudulently obtains or attempts to obtain any money from any (life / accident) insurance company of this state upon a policy of insurance issued in the name of a fictitious person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Obtained money**

The first element is that the defendant obtained or attempted to obtain from any (life / accident) insurance company of this state, any money on any policy of insurance issued by it.

### **Element 2 - By fraud or fictitious name**

The second element is that the money was obtained *<insert as appropriate:>*

- by (falsely / fraudulently) representing the insured person as (dead / injured).
- fraudulently upon a policy of insurance issued in the name of a fictitious person.

A "fraudulent representation" is a representation whose purpose is to deceive. It is knowingly untrue or made without belief in its truth and for the purpose of inducing action on it.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) obtained or attempted to obtain from any life or accident insurance company of this state, any money on any policy of insurance issued by it, and 2) (he/she) *<insert specific allegations as to fraudulent conduct>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of defrauding a life or accident insurance company, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### ***Commentary***

#### ***Sentence Enhancer***

Section 38a-287 provides a greater penalty depending on the amount of the money obtained. Prior to October 1, 2007, that amount was \$100. The statute was amended, effective October 1, 2008, to raise the amount to \$2,000. The jury must find this proved beyond a reasonable doubt. See Sentence Enhancers, Instruction 2.11-4.

## 10.6-2 Health Insurance Fraud -- § 53-442

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with health insurance fraud. The statute defining this offense provides in pertinent part as follows:

a person is guilty of health insurance fraud when (he/she), with the intent to defraud or deceive any insurer, *<insert as appropriate:>*

- (presents / causes to be presented) to any (insurer / insurer's agent) any written or oral statement as part of or in support of (an application for / claim for payment or other benefit from) a plan providing health care benefits, whether for (himself/herself), a family member or a third party, knowing that such statement contains any false, incomplete, deceptive or misleading information concerning any fact or thing material to such claim or application, or omits information concerning any fact or thing material to such claim or application
- (assists / abets / solicits / conspires with) another to prepare or present any written or oral statement to any insurer or any agent thereof, in connection with, or in support of, an application for any policy of insurance or claim for payment or other benefit from a plan providing health care benefits knowing that such statement contains any false, deceptive or misleading information concerning any fact or thing material to such application or claim.

"Person" is defined by statute as any individual, corporation, limited liability company, partnership, association or any other legal entity.<sup>1</sup>

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Presented oral or written statement**

The first element is that the defendant *<insert as appropriate:>*

- (presented / caused to be presented)
- (assisted / abetted / solicited / conspired) with another to prepare or present any written or oral statement as part of or in support of an application for any policy of insurance or claim for payment or other benefit from a plan providing health care benefits, whether for himself, a family member or a third party. "Statement" includes but is not limited to any notice, statement, invoice, account, bill for services, explanation of services, medical opinion, test result, computer generated document, electronic transmission or other evidence of loss, injury or expense.<sup>2</sup>

### **Element 2 - To an insurer**

The second element is that the statement was presented to an insurer or an insurer's agent. "Insurer" means any insurance company, health care center, corporation, Lloyd's insurer, fraternal benefit society or any other legal entity authorized to provide health care benefits in this state, including benefits provided under health insurance, disability insurance, workers' compensation and automobile insurance or any person, partnership, association or legal entity

which is self-insured and provides health care benefits to its employees or governmental entity which provides medical benefits to Medicare or Medicaid recipients.<sup>3</sup>

### **Element 3 - Knowledge**

The third element is that the defendant knew that the statement contained false, incomplete, deceptive or misleading information concerning any fact or thing material to such claim or application, or knowingly omitted information concerning any fact or thing material to such claim or application.

"Misleading information" includes but is not limited to falsely representing that goods or services were medically necessary in accordance with professionally accepted standards.<sup>4</sup>

A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Element 4 - Intent to defraud**

The fourth element is that the defendant did so with the specific intent to defraud or deceive the insurer. <See *Intent to Defraud, Instruction 2.3-6.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (presented / caused to be presented) an (oral / written) statement in support of (an application for / claim for payment or other benefit from) a plan providing health care benefits, 2) the statement was presented to an insurer or an insurer's agent, 3) the defendant knew that the statement contained false, incomplete, deceptive or misleading information or omitted information material to the (application / claim), and 4) the defendant intended to defraud the insurer.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of health insurance fraud, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 53-441 (b).

<sup>2</sup> General Statutes § 53-441 (a).

<sup>3</sup> General Statutes § 53-441 (c).

<sup>4</sup> General Statutes § 53-442.

## 10.6-3 Insurance Fraud -- § 53a-215

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with insurance fraud. The statute defining this offense reads in pertinent part as follows:

a person is guilty of insurance fraud when the person, with the intent to (injure / defraud / deceive) any insurance company, <insert appropriate subsection:>

- § 53a-215 (a) (1): (presents / causes to be presented) to any insurance company, any written or oral statement including computer-generated documents as part of, or in support of,
- § 53a-215 (a) (2): (assists / abets / solicits / conspires with) another to prepare or make any written or oral statement that is intended to be presented to any insurance company in connection with, or in support of, (any application for any policy of insurance / any claim for payment or other benefit pursuant to such policy of insurance), knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such application or claim for the purposes of defrauding such insurance company.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Claim or application to insurance company

The first element is that the defendant <insert as appropriate:>

- (presented / caused to be presented) to any insurance company, any written or oral statement including computer-generated documents as part of, or in support of,
- (assisted / abetted / solicited / conspired with) another to prepare or make any written or oral statement that is intended to be presented to any insurance company in connection with, or in support of,

any (application for any insurance policy / any claim for payment or other benefit pursuant to an insurance policy).

"Insurance company" includes any person or combination of persons doing any kind or form of insurance business other than a fraternal benefit society, and shall include a receiver of any insurer when the context reasonably permits.<sup>1</sup>

"Statement" includes, but is not limited to, any notice, statement, invoice, account, estimate of property damages, bill for services, test result, or other evidence of loss, injury, or expense.<sup>2</sup>

"Insurance" means any agreement to pay a sum of money, provide services or any other thing of value on the happening of a particular event or contingency or to provide indemnity for loss in respect to a specified subject by specified perils in return for a consideration. In any contract of insurance, an insured shall have an interest which is subject to a risk of loss through destruction or impairment of that interest, which risk is assumed by the insurer and such assumption shall be part of a general scheme to distribute losses among a large group of persons bearing similar risks in return for a ratable contribution or other consideration.<sup>3</sup>

"Policy" means any document, including attached endorsements and riders, purporting to be an enforceable contract, which memorializes in writing some or all of the terms of an insurance contract.<sup>4</sup>

**Element 2 - Knowledge of falsity**

The second element is that the defendant knew that such statement contained false, incomplete, or misleading information concerning any fact or thing material to such (application / claim). A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

**Element 3 - Intent**

The third element is that the defendant intended to (injure / defraud / deceive) the insurance company.

<See *Intent: Specific, Instruction 2.3-1, and Intent to Defraud, Instruction 2.3-6.*>

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) <insert specific allegations regarding the presentation of the application or claim>, 2) (he/she) knew that the (application / claim) contained false statements, and 3) (he/she) intended to deceive or defraud the insurance company.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of insurance fraud, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> General Statutes § 38a-1 (11).

<sup>2</sup> General Statutes § 53a-215 (b).

<sup>3</sup> General Statutes § 38a-1 (15).

<sup>4</sup> General Statutes § 38a-1 (10).

## **10.7 IMPERSONATION**

**10.7-1 Criminal Impersonation -- § 53a-130 (a)  
(1) and (3)**

**10.7-2 Criminal Impersonation (Public Servant)  
-- § 53a-130 (a) (4)**

**10.7-3 Impersonation of a Police Officer -- §  
53a-130a**

**10.7-4 Criminal Impersonation (by Electronic  
Device) -- § 53a-130 (a) (5)**

**10.7-5 Criminal Impersonation (State Marshal)  
-- § 53a-130 (a) (2)**

## 10.7-1 Criminal Impersonation -- § 53a-130 (a) (1) and (3)

Revised to December 1, 2007 (modified November 6, 2014)

The defendant is charged [in count \_\_\_] with criminal impersonation. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal impersonation when (he/she) *<insert appropriate subsection:>*

- § 53a-130 (a) (1): impersonates another and does an act in such assumed character with the intent to (obtain a benefit / injure another / defraud another).
- § 53a-130 (a) (3): pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to (obtain a benefit / injure another / defraud another).

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Impersonated another

The first element is that the defendant, by (his/her) words or conduct, impersonated *<insert as appropriate:>*

- another person.
- a representative of *<insert name of person or organization>*.

To "impersonate" means to act the part of or to mimic the appearance or manner or adopt the personal identifying characteristics or information. The person or organization impersonated must actually exist.

### Element 2 - Intent

The second element is that in performing some acts while pretending to be someone else, (he/she) intended to (obtain a benefit / injure another / defraud another).

*<See Intent: Specific, Instruction 2.3-1, and Intent to Defraud, Instruction 2.3-6.>*

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) pretended to be *<insert name of person>*, and 2) while pretending to be *<insert name of person>*, (he/she) intended to (obtain a benefit / injure another / defraud another).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal impersonation, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

### *Commentary*

Subsection (2) was changed to (3), effective October 1, 2014.

For a conviction to be valid the defendant must be found to have impersonated a real person. "The statute as written does not prohibit giving a false name; it prohibits impersonating another." *State v. Smith*, 194 Conn. 213, 222 (1984); see also *State v. Bradley*, 60 Conn. App. 534, 539, cert. denied, 255 Conn. 921 (2000). In *State v. Moore*, 97 Conn. 243, 249, appeal withdrawn (2006), the Court upheld the defendant's conviction for impersonating another, even though that person had previously given a false name to the police.

## 10.7-2 Criminal Impersonation (Public Servant) -- § 53a-130 (a) (4)

Revised to December 1, 2007 (modified November 1, 2014)

The defendant is charged [in count \_\_\_] with criminal impersonation. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal impersonation when (he/she) pretends to be a public servant other than a sworn member of an organized local police department or the division of state police within the department of emergency services and public protection, or wears or displays without authority any uniform, badge or shield by which such public servant is lawfully distinguished, with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Impersonation

The first element is that the defendant *<insert as appropriate:>*

- by (his/her) words or conduct, pretended to be a public servant other than a sworn member of an organized local police department or the division of state police within the department of emergency services and public protection.
- wore or displayed without authority a uniform, badge or shield by which a public servant is lawfully distinguished.

A "public servant" is an officer or employee of government or a quasi-public agency, elected or appointed, and any person otherwise paid or unpaid, in performing a governmental function.

To "pretend" means to make-believe, to feign, or to conduct a sham.<sup>1</sup>

### Element 2 - Intent

The second element is that by such action, (he/she) intended to induce another to submit to such pretended official authority or otherwise to act in reliance upon such pretended authority. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (pretended to be *<insert type of public servant>* / wore or displayed *<insert allegations>*), and 2) intended to induce another to submit to such pretended official authority or otherwise to act in reliance upon such pretended authority.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal impersonation, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Wall*, 40 Conn. App. 643, 670-71, cert. denied, 237 Conn. 924 (1996) (distinguishing the intent to pretend from the intent to induce another to submit to the pretended authority).

***Commentary***

Subsection (3) was changed to (4), effective October 1, 2014.

The fact that the uniform, badge or shield was not authentic is irrelevant. "The goal of the statute is to prohibit criminal impersonation. Among other things, the statute prohibits an individual from using a badge with the intent of inducing another to submit to authority that he or she does not possess. Because the state proved beyond a reasonable doubt that the defendant used a badge that appeared to lawfully distinguish him and that he used the badge in the manner proscribed by the statute, we are unable to see how the issue of the badge's lineage or authenticity bears on the goals that the legislature sought to achieve." *State v. Guadalupe*, 66 Conn. App. 819, 828 (2001), cert. denied, 259 Conn. 902 (2002).

## 10.7-3 Impersonation of a Police Officer -- § 53a-130a

Revised to December 1, 2007 (modified November 6, 2014)

The defendant is charged [in count \_\_\_] with impersonation of a police officer. The statute defining this offense reads in pertinent part as follows:

a person is guilty of impersonation of a police officer when (he/she) pretends to be a sworn member of an organized local police department or the division of state police within the department of emergency services and public protection, or wears or displays without authority any uniform, badge or shield by which such police officer is lawfully distinguished, with intent to induce another person to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Impersonation

The first element is that the defendant *<insert as appropriate:>*

- by (his/her) words or conduct, pretended to be a sworn member of an organized local police department or the division of state police within the department of emergency services and public protection.
- wore or displayed without authority a uniform, badge or shield by which a police officer is lawfully distinguished.

To "pretend" means to make-believe, to feign, or to conduct a sham.<sup>1</sup>

### Element 2 - Intent

The second element is that by such action, (he/she) intended to induce another to submit to such pretended official authority or otherwise to act in reliance upon such pretended authority. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (pretended to be a *<insert type of officer>* / wore or displayed *<insert allegations>*), and 2) intended to induce another to submit to such pretended official authority or otherwise to act in reliance upon such pretended authority.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of impersonation of a police officer, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Wall*, 40 Conn. App. 643, 670-71, cert. denied, 237 Conn. 924 (1996).

### *Commentary*

The fact that the uniform, badge or shield was not authentic is irrelevant. "The goal of the statute is to prohibit criminal impersonation. Among other things, the statute prohibits an individual from using a badge with the intent of inducing another to submit to authority that he or she does not possess. Because the state proved beyond a reasonable doubt that the defendant used a badge that appeared to lawfully distinguish him and that he used the badge in the manner proscribed by the statute, we are unable to see how the issue of the badge's lineage or authenticity bears on the goals that the legislature sought to achieve." *State v. Guadalupe*, 66 Conn. App. 819, 828 (2001), cert. denied, 259 Conn. 902 (2002).

## 10.7-4 Criminal Impersonation (by Electronic Device) -- § 53a-130 (a) (5)

New, May 10, 2012 (modified November 6, 2014)

The defendant is charged [in count \_\_\_] with criminal impersonation. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal impersonation when (he/she), with intent to defraud, deceive or injure another, uses an electronic device to impersonate another and such act results in personal injury or financial loss to another or the initiation of judicial proceedings against another.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Impersonated another using an electronic device**

The first element is that the defendant impersonated another person. To "impersonate" means to act the part of or to mimic the appearance or manner or adopt the personal identifying characteristics or information of another person.

### **Element 2 - Using an electronic device**

The second element is that the defendant used an electronic device to impersonate another. *<Describe the type of electronic device allegedly used.>*

### **Element 3 - Intent**

The third element is that, while pretending to be someone else, (he/she) intended to defraud, deceive or injure another. *<See Intent: Specific, Instruction 2.3-1, and Intent to Defraud, Instruction 2.3-6.>*

### **Element 4 - Results**

The fourth element is that the acts of the defendant in impersonating another person resulted in (personal injury to another / financial loss to another / the initiation of judicial proceedings against another). *<Describe the specific types of injury alleged.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant impersonated another person, 2) used an electronic device to do so, 3) intended to defraud, deceive or injure another, and 4) the result of the defendant's acts was (personal injury to another / financial loss to another / the initiation of judicial proceedings against another).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of criminal impersonation, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

*Commentary*

This subsection was added by Public Acts 2011, No. 11-221, § 1, effective October 1, 2011. The subsection was changed from (4) to (5), effective October 1, 2014.

Subsection (b) exempts law enforcement officers acting in the performance of their official duties.

## 10.7-5 Criminal Impersonation (State Marshal) -- § 53a-130 (2)

New, November 6, 2014

The defendant is charged [in count \_\_\_] with criminal impersonation. The statute defining this offense reads in pertinent part as follows:

a person is guilty of criminal impersonation when (he/she) pretends to be a state marshal with intent to obtain a benefit or induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Impersonation

The first element is that the defendant by (his/her) words or conduct, pretended to be a state marshal. To "pretend" means to make-believe, to feign, or to conduct a sham.<sup>1</sup>

### Element 2 - Intent

The second element is that by such action, (he/she) intended to <insert as appropriate:>

- obtain a benefit.
- induce another to submit to such pretended official authority or otherwise to act in reliance upon such pretended authority.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that the defendant 1) (pretended to be a state marshal, and 2) intended to (obtain a benefit / induce another to submit to such pretended official authority or otherwise to act in reliance upon such pretended authority).

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of impersonation, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

---

<sup>1</sup> *State v. Wall*, 40 Conn. App. 643, 670-71, cert. denied, 237 Conn. 924 (1996).

### Commentary

This subsection was added by Public Acts 2014, No. 86, § 1, effective October 1, 2014.

## **10.8 EAVESDROPPING**

**10.8-1 Tampering with Private Communications**

**-- § 53a-188 (a) (1)**

**10.8-2 Tampering with Private Communications**

**-- § 53a-188 (a) (2)**

**10.8-3 Illegal Wiretapping -- § 53a-189**

**10.8-4 Eavesdropping -- § 53a-189**

## 10.8-1 Tampering with Private Communications -- § 53a-188 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with tampering with private communications. The statute defining this offense reads in pertinent part as follows:

a person is guilty of tampering with private communications when, knowing that (he/she) does not have the consent of the sender or receiver, (he/she) obtains from an employee, officer or representative of a telephone or telegraph corporation, by connivance, deception, intimidation or in any other manner, information with respect to the contents or nature of a telephonic or telegraphic communication.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Obtained contents of communication**

The first element is that the defendant obtained the contents or nature of a telephonic or telegraphic communication, by connivance, deception, intimidation or in any other manner, from an employee, officer or representative of a telephone or telegraph corporation. *<Insert specific allegations.>*

### **Element 2 - Without consent**

The second element is that the defendant knew that (he/she) did not have the consent of the sender or receiver. A person does an act "without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. *<See Knowledge, Instruction 2.3-3.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) obtained the contents or nature of a telephonic or telegraphic communication from an employee, officer or representative of a telephone or telegraph corporation, and 2) (he/she) knew that the sender or receiver did not consent.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of tampering with private communications, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.8-2 Tampering with Private Communications -- § 53a-188 (a) (2)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with tampering with private communications. The statute defining this offense reads in pertinent part as follows:

a person is guilty of tampering with private communications when, knowing that (he/she) does not have the consent of the sender or receiver, and being an employee, officer or representative of a telephone or telegraph corporation, (he/she) knowingly divulges to another person the contents or nature of a telephonic or telegraphic communication.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Defendant's position**

The first element is that the defendant was an employee, officer or representative of a telephone or telegraph corporation.

### **Element 2 - Divulged contents**

The second element is that (he/she) knowingly divulged to another person the contents or nature of a telephonic or telegraphic communication. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See *Knowledge, Instruction 2.3-3.*>

### **Element 3 - Without consent**

The third element is that the defendant knew that (he/she) did not have the consent of the sender or receiver. A person does an act "without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant was an employee, officer or representative of a telephone or telegraph corporation, 2) (he/she) knowingly divulged to another person the contents or nature of a telephonic or telegraphic communication, and 3) (he/she) knew that (he/she) did not have the consent of the sender or receiver.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of tampering with private communications, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.8-3 Illegal Wiretapping -- § 53a-189

Revised to December 1, 2007

**Note:** Section 53a-189 contains two ways that eavesdropping occurs, wiretapping and mechanical overhearing of a conversation. This instruction is for wiretapping. See also Eavesdropping, Instruction 10.8-4.

The defendant is charged [in count \_\_\_] with eavesdropping by unlawful wiretapping. The statute defining this offense reads in pertinent part as follows:

a person is guilty of eavesdropping when he unlawfully engages in wiretapping.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### Element 1 - Wiretapping

The first element is that the defendant engaged in illegal wiretapping. "Wiretapping" means the intentional overhearing or recording of a telephonic or telegraphic communication or a communication made by cellular radio telephone by a person other than the sender or receiver of the communication by means of any instrument, device or equipment.

"Cellular radio telephone" means a wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radio telephones.

### Element 2 - Without consent

The second element is that the defendant did not have the consent of either party to the communication. If (he/she) received permission from one of the parties to the conversation to make a recording of the communication, then (he/she) cannot be found guilty of eavesdropping. A person does an act "without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

### Element 3 - Intent

The third element is that the defendant intended to overhear or record the communication. If the overhearing is unintentional, involving the malfunctioning of telephonic equipment, then (he/she) cannot be found guilty of eavesdropping. To be guilty of the offense of eavesdropping, there must be a deliberate and wilful intention to overhear the communication. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### Conclusion

In summary, the state must prove beyond a reasonable doubt that 1) the defendant engaged in unlawful wiretapping, 2) (he/she) did not have the consent of either party to the communication, and 3) (he/she) intended to overhear or record the communication

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of eavesdropping, then you shall find the defendant guilty. On the other hand, if

you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.8-4 Eavesdropping -- § 53a-189

Revised to December 1, 2007 (modified May 23, 2013)

**Note:** Section 53a-189 contains two ways that eavesdropping occurs, wiretapping and mechanical overhearing of a conversation, which are defined in § 53a-187. This instruction is for mechanical overhearing of a conversation. See also *Illegal Wiretapping, Instruction 10.8-3*.

The defendant is charged [in count \_\_\_] with eavesdropping. The statute defining this offense reads in pertinent part as follows:

a person is guilty of eavesdropping when he unlawfully engages in mechanical overhearing of a conversation.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Eavesdropping by mechanical device**

The first element is that the defendant unlawfully listened in on or recorded a conversation or discussion, at which (he/she) was not present, by means of any mechanical instrument, device or equipment. "Unlawfully" means not specifically authorized by law.

### **Element 2 - Without consent**

The second element is that the defendant did not have the consent of either party to the conversation. If (he/she) received permission from one of the parties to the conversation to listen in on the conversation, then (he/she) cannot be found guilty of eavesdropping. A person does an act "without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

### **Element 3 - Intent**

The third element is that the defendant intended to listen in on the conversation. If the overhearing is unintentional, then (he/she) cannot be found guilty of eavesdropping. To be guilty of the offense of eavesdropping, there must be a deliberate and wilful intention to overhear the conversation. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1*.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant unlawfully listened in on a conversation or discussion by some mechanical means, 2) (he/she) did not have the consent of either party to the conversation or discussion, and 3) (he/she) intended to listen in on it.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of eavesdropping, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## **10.9 OTHER**

**10.9-1 Unlawfully Using Slugs -- § 53a-144 and § 53a-145 (a) (2)**

**10.9-2 Unlawfully Using Slugs in the Second Degree -- § 53a-145 (a) (1)**

**10.9-3 Unlawfully Concealing a Will -- § 53a-131**

## 10.9-1 Unlawfully Using Slugs -- §§ 53a-144 and 53a-145 (a) (2)

Revised to December 1, 2007

**Note:** The degree of the offense depends on the value of the slugs. See § 53a-144 (first degree: exceeds \$100); § 53a-145 (a) (2): does not exceed \$100).

The defendant is charged [in count \_\_\_] with unlawfully using slugs in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of unlawfully using slugs in the first degree when (he/she) (makes / possesses / disposes of) slugs with intent to enable a person to insert or deposit them in a coin machine and the value of such slugs (exceeds / does not exceed) one hundred dollars.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Made, possessed or disposed of slugs**

The first element is that the defendant (made / possessed / disposed of) slugs. "Slug" means an object or article which, by virtue of its size, shape or any other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill or token. <See *Possession, Instruction 2.11-1.*>

### **Element 2 - Intent**

The second element is that (he/she) (made / possessed / disposed of) slugs with the intent to enable a person to insert or deposit them in a coin machine. "Coin machine" means a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle designed (A) to receive a coin or bill or token made for the purpose, and (B) in return for the insertion or deposit thereof, automatically to offer, to provide, to assist in providing or to permit the acquisition of some property or some service.

A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 3 - Value**

The third element is that the value of such slugs (exceeded / did not exceed) one hundred dollars. "Value" of a slug means the value of the coin, bill or token for which it is capable of being substituted.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant (made / possessed / disposed of) slugs, 2) (he/she) had the intent to enable a person to insert or deposit them in a coin machine, and 3) the value of the slugs (exceeded / did not exceed) one hundred dollars.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of unlawfully using slugs in the (first / second) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.9-2 Unlawfully Using Slugs in the Second Degree -- § 53a-145 (a) (1)

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with unlawfully using slugs in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of unlawfully using slugs in the second degree when, with intent to defraud the owner of a coin machine, (he/she) inserts or deposits a slug in such machine.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Inserted or deposited slugs**

The first element is that the defendant inserted or deposited a slug in a coin machine. "Coin machine" means a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle designed to receive a coin or a bill or a token made for the purpose and, in return for the insertion or deposit thereof, automatically to offer, to provide, to assist in providing or to permit the acquisition of some property or some service. A "slug" means an object or article that, by virtue of its size, shape or any other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill or token.

### **Element 2 - Intent**

The second element is that the defendant intended to defraud the owner of the coin machine.  
<See *Intent to Defraud, Instruction 2.3-6.*>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant inserted or deposited a slug in a coin machine, and 2) (he/she) had the intent to defraud the owner of the coin machine.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of unlawfully using slugs in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.9-3 Unlawfully Concealing a Will -- § 53a-131

Revised to December 1, 2007

The defendant is charged [in count \_\_\_] with unlawfully concealing a will. The statute defining this offense reads in pertinent part as follows:

a person is guilty of unlawfully concealing a will when, with intent to defraud, (he/she) conceals, secrets, suppresses, mutilates or destroys a will, codicil or other testamentary instrument.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Existence of a will**

The first element is that there was a will, codicil or other testamentary instrument. A will is an instrument by which one disposes of (his/her) property, to take effect at (his/her) death.

*<Describe the alleged document.>*

### **Element 2 - Concealed the will**

The second element is that the defendant concealed, secreted, suppressed or mutilated the *<identify document>*.

### **Element 3 - Intent**

The third element is that the defendant acted with the intent to defraud. *<See Intent to Defraud, Instruction 2.3-6.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) a will, codicil or other testamentary instrument existed, 2) the defendant *<insert specific allegations>*, and 3) (he/she) did so with the intent to defraud.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of unlawfully concealing a will, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

# GLOSSARY OF TERMS

"Although it is generally preferable for a jury to be instructed on the statutory definition of a word where one exists, a trial court is not necessarily required to do so. . . . Specific words in a statute need not be defined if they are being used and understood in their ordinary meaning. . . . The definition of words in our standard dictionaries is taken as a matter of common knowledge which the jury is supposed to possess. . . . If this commonly understood meaning of the word, as found in a dictionary and presumably applied by the jury, is substantially the same as the statutory definition, then the failure of the trial court to give the statutory definition could not have had any effect on the jury deliberations." *State v. Brown*, 259 Conn. 799, 808-809 (2002) (trial court did not define "firearm"; the dictionary definition, which was presumed to have been used by the jury, and the statutory definition are essentially the same).

"In the absence of a statutory definition, words and phrases in a particular statute are to be construed according to their common usage. . . . To ascertain that usage, we look to the dictionary definition of the term." (Internal quotation marks omitted.) *Chatterjee v. Commissioner of Revenue Services*, 277 Conn. 681, 690 (2006); General Statutes § 1-1 (a).

Although the definitions in General Statutes § 53a-3 apply only to the Penal Code, the definitions may provide guidance to the definition of terms used in other sections if it is not inconsistent with any of the language in that section. *State v. Ramos*, 271 Conn 785, 795-97 (2004).

## **ABDUCT**

"Abduct" means to restrain a person with intent to prevent (his/her) liberation by either (A) secreting or holding (him/her) in a place where (he/she) is not likely to be found, or (B) using or threatening to use physical force or intimidation.

**Source:** General Statutes § 53a-91 (2) (applies to Part VII: Kidnapping and Related Offenses, §§ 53a-92 -- 53a-99).

**Commentary:** See glossary entry for "restrain" and the Introduction to Kidnapping and Unlawful Restraint.

## **ABUSE**

"Abuse" means any repeated act or omission that causes physical injury or serious physical injury to an elderly, blind or disabled person or a person with intellectual disability, except when (A) the act or omission is a part of the treatment and care, and in furtherance of the health and safety, of the elderly, blind or disabled person or a person with intellectual disability, or (B) the act or omission is based upon the instructions, wishes, consent, refusal to consent or revocation of consent of an elderly, blind or disabled person or a person with intellectual disability, or the legal representative of an incapable elderly, blind or disabled person or a person with intellectual disability. For purposes of this subdivision, "repeated" means an act or omission that occurs on two or more occasions.

**Source:** General Statutes § 53a-320 (6) (applies to Part XXVI: Abuse of Elderly, Blind, or Disabled Persons or Persons with Intellectual Disabilities, §§ 53a-320 -- 53a-323).

### **ACCESS**

"Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

**Source:** General Statutes § 53a-250 (1) (applies to Part XXII: Computer-Related Offenses, §§ 53a-251 -- 53a-261).

### **ACTOR**

"Actor" means a person accused of sexual assault.

**Source:** General Statutes § 53a-65 (1) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

### **ADMINISTER**

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by: (A) A practitioner, or, in (his/her) presence, by (his/her) authorized agent, or (B) the patient or research subject at the direction and in the presence of the practitioner, or (C) a nurse or intern under the direction and supervision of a practitioner.

**Source:** General Statutes § 21a-240 (2) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** See Drug Transactions in the Introduction to Drugs.

### **AMPHETAMINE-TYPE SUBSTANCES**

"Amphetamine-type substances" include amphetamine, optical isomers thereof, salts of amphetamine and its isomers, and chemical compounds which are similar thereto in chemical structure or which are similar thereto in physiological effect, and which show a like potential for abuse, which are controlled substances under this chapter unless modified.

**Source:** General Statutes § 21a-240 (4) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** See Defining the Controlled Substance in the Introduction to Drugs.

### **APPROPRIATE**

To "appropriate" property of another to oneself or a third person means (A) to exercise control over it, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit, or (B) to dispose of the property for the benefit of oneself or a third person.

**Source:** General Statutes § 53a-118 (a) (4) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

**Commentary:** See glossary entry for "deprive." The court should not instruct on both deprive and appropriate when the state is proceeding only one or the other theory in a larceny prosecution. *State v. Spillane*, 54 Conn. App. 201, 210-20 (1999), aff'd on other grounds, 257 Conn. 750 (2001).

## **ASSAULT WEAPON**

"Assault weapon" means:

- (A) (i) Any selective-fire firearm capable of fully automatic, semiautomatic or burst fire at the option of the user or any of the following specified semiautomatic firearms: Algimec Agmi; Armalite AR-180; Australian Automatic Arms SAP Pistol; Auto-Ordnance Thompson type; Avtomat Kalashnikov AK-47 type; Barrett Light-Fifty model 82A1; Beretta AR-70; Bushmaster Auto Rifle and Auto Pistol; Calico models M-900, M-950 and 100-P; Chartered Industries of Singapore SR-88; Colt AR-15 and Sporter; Daewoo K-1, K-2, Max-1 and Max-2; Encom MK-IV, MP-9 and MP-45; Fabrique Nationale FN/FAL, FN/LAR, or FN/FNC; FAMAS MAS 223; Feather AT-9 and Mini-AT; Federal XC-900 and XC-450; Franchi SPAS-12 and LAW-12; Galil AR and ARM; Goncz High-Tech Carbine and High-Tech Long Pistol; Heckler & Koch HK-91, HK-93, HK-94 and SP-89; Holmes MP-83; MAC-10, MAC-11 and MAC-11 Carbine type; Intratec TEC-9 and Scorpion; Iver Johnson Enforcer model 3000; Ruger Mini-14/5F folding stock model only; Scarab Skorpion; SIG 57 AMT and 500 series; Spectre Auto Carbine and Auto Pistol; Springfield Armory BM59, SAR-48 and G-3; Sterling MK-6 and MK-7; Steyr AUG; Street Sweeper and Striker 12 revolving cylinder shotguns; USAS-12; UZI Carbine, Mini-Carbine and Pistol; Weaver Arms Nighthawk; Wilkinson "Linda" Pistol;
- (ii) A part or combination of parts designed or intended to convert a firearm into an assault weapon, as defined in subparagraph (A)(i) of this subdivision, or any combination of parts from which an assault weapon, as defined in subparagraph (A)(i) of this subdivision, may be rapidly assembled if those parts are in the possession or under the control of the same person;
- (B) Any of the following specified semiautomatic centerfire rifles, or copies or duplicates thereof with the capability of any such rifles, that were in production prior to or on April 4, 2013: (i) AK-47; (ii) AK-74; (iii) AKM; (iv) AKS-74U; (v) ARM; (vi) MAADI AK47; (vii) MAK90; (viii) MISR; (ix) NHM90 and NHM91; (x) Norinco 56, 56S, 84S and 86S; (xi) Poly Technologies AKS and AK47; (xii) SA 85; (xiii) SA 93; (xiv) VEPR; (xv) WASR-10; (xvi) WUM; (xvii) Rock River Arms LAR-47; (xviii) Vector Arms AK-47; (xix) AR-10; (xx) AR-15; (xxi) Bushmaster Carbon 15, Bushmaster XM15, Bushmaster ACR Rifles, Bushmaster MOE Rifles; (xxii) Colt Match Target Rifles; (xxiii) Armalite M15; (xxiv) Olympic Arms AR-15, A1, CAR, PCR, K3B, K30R, K16, K48, K8 and K9 Rifles; (xxv) DPMS Tactical Rifles; (xxvi) Smith and Wesson M&P15 Rifles; (xxvii) Rock River Arms LAR-15; (xxviii) Doublestar AR Rifles; (xxix) Barrett REC7; (xxx) Beretta Storm; (xxxi) Calico Liberty 50, 50 Tactical, 100, 100 Tactical, I, I Tactical, II and II Tactical Rifles; (xxxii) Hi-Point Carbine Rifles; (xxxiii) HK-PSG-1; (xxxiv) Kel-Tec Sub-2000, SU Rifles, and RFB; (xxxv) Remington Tactical Rifle Model 7615; (xxxvi) SAR-8, SAR-4800 and SR9; (xxxvii) SLG 95; (xxxviii) SLR 95 or 96; (xxxix) TNW M230 and M2HB; (xl) Vector Arms UZI; (xli) Galil and Galil Sporter; (xlii)

Daewoo AR 100 and AR 110C; (xliii) Fabrique Nationale/FN 308 Match and L1A1 Sporter; (xliv) HK USC; (xlv) IZHMASH Saiga AK; (xlvi) SIG Sauer 551-A1, 556, 516, 716 and M400 Rifles; (xlvii) Valmet M62S, M71S and M78S; (xlviii) Wilkinson Arms Linda Carbine; and (xlix) Barrett M107A1;

- (C) Any of the following specified semiautomatic pistols, or copies or duplicates thereof with the capability of any such pistols, that were in production prior to or on April 4, 2013: (i) Centurion 39 AK; (ii) Draco AK-47; (iii) HCR AK-47; (iv) IO Inc. Hellpup AK-47; (v) Mini-Draco AK-47; (vi) Yugo Krebs Krink; (vii) American Spirit AR-15; (viii) Bushmaster Carbon 15; (ix) Doublestar Corporation AR; (x) DPMS AR-15; (xi) Olympic Arms AR-15; (xii) Rock River Arms LAR 15; (xiii) Calico Liberty III and III Tactical Pistols; (xiv) Masterpiece Arms MPA Pistols and Velocity Arms VMA Pistols; (xv) Intratec TEC-DC9 and AB-10; (xvi) Colefire Magnum; (xvii) German Sport 522 PK and Chiappa Firearms Mfour-22; (xviii) DSA SA58 PKP FAL; (xix) I.O. Inc. PPS-43C; (xx) Kel-Tec PLR-16 Pistol; (xxi) Sig Sauer P516 and P556 Pistols; and (xxii) Thompson TA5 Pistols;
- (D) Any of the following semiautomatic shotguns, or copies or duplicates thereof with the capability of any such shotguns, that were in production prior to or on April 4, 2013: All IZHMASH Saiga 12 Shotguns;
- (E) Any semiautomatic firearm regardless of whether such firearm is listed in subparagraphs (A) to (D), inclusive, of this subdivision, and regardless of the date such firearm was produced, that meets the following criteria:
- (i) A semiautomatic, centerfire rifle that has an ability to accept a detachable magazine and has at least one of the following:
    - (I) A folding or telescoping stock;
    - (II) Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing;
    - (III) A forward pistol grip;
    - (IV) A flash suppressor; or
    - (V) A grenade launcher or flare launcher; or
  - (ii) A semiautomatic, centerfire rifle that has a fixed magazine with the ability to accept more than ten rounds; or
  - (iii) A semiautomatic, centerfire rifle that has an overall length of less than thirty inches; or
  - (iv) A semiautomatic pistol that has an ability to accept a detachable magazine and has at least one of the following:
    - (I) An ability to accept a detachable ammunition magazine that attaches at some location outside of the pistol grip;
    - (II) A threaded barrel capable of accepting a flash suppressor, forward pistol grip or silencer;
    - (III) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to fire the firearm without being burned, except a slide that

- encloses the barrel; or  
    (IV) A second hand grip; or
- (v) A semiautomatic pistol with a fixed magazine that has the ability to accept more than ten rounds; or
- (vi) A semiautomatic shotgun that has both of the following:  
    (I) A folding or telescoping stock; and  
    (II) Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing; or
- (vii) A semiautomatic shotgun that has the ability to accept a detachable magazine; or
- (viii) A shotgun with a revolving cylinder; or
- (ix) Any semiautomatic firearm that meets the criteria set forth in subdivision (3) or (4) of subsection (a) of section 53-202a of the general statutes, revision of 1958, revised to January 1, 2013; or
- (F) A part or combination of parts designed or intended to convert a firearm into an assault weapon, as defined in any provision of subparagraphs (B) to (E), inclusive, of this subdivision, or any combination of parts from which an assault weapon, as defined in any provision of subparagraphs (B) to (E), inclusive, of this subdivision, may be assembled if those parts are in the possession or under the control of the same person;
- "Assault weapon" does not include (A) any firearm modified to render it permanently inoperable, or (B) a part or any combination of parts of an assault weapon, that are not assembled as an assault weapon, when in the possession of a licensed gun dealer, as defined in subsection (f) of section 53-202f, or a gunsmith who is in the licensed gun dealer's employ, for the purposes of servicing or repairing lawfully possessed assault weapons under sections 53-202a to 53-202k, inclusive;
- "Action of the weapon" means the part of the firearm that loads, fires and ejects a cartridge, which part includes, but is not limited to, the upper and lower receiver, charging handle, forward assist, magazine release and shell deflector;
- "Detachable magazine" means an ammunition feeding device that can be removed without disassembling the firearm action;
- "Firearm" means a firearm, as defined in section 53a-3;
- "Forward pistol grip" means any feature capable of functioning as a grip that can be held by the nontrigger hand;
- "Lawfully possesses" means, with respect to an assault weapon described in any provision of subparagraphs (B) to (F), inclusive, of this subdivision, (A) actual possession that is lawful under sections 53-202b to 53-202k, (B) constructive possession pursuant to a lawful purchase transacted prior to or on April 4, 2013, regardless of whether the assault weapon was delivered to the purchaser prior to or on April 4, 2013, which lawful

purchase is evidenced by a writing sufficient to indicate that (i) a contract for sale was made between the parties prior to or on April 4, 2013, for the purchase of the assault weapon, or (ii) full or partial payment for the assault weapon was made by the purchaser to the seller of the assault weapon prior to or on April 4, 2013, or (C) actual possession under subparagraph (A) of this subdivision, or constructive possession under subparagraph (B) of this subdivision, as evidenced by a written statement made under penalty of false statement on such form as the Commissioner of Emergency Services and Public Protection prescribes;

"Pistol grip" means a grip or similar feature that can function as a grip for the trigger hand; and

"Second hand grip" means a grip or similar feature that can function as a grip that is additional to the trigger hand grip.

*Source:* General Statutes § 53-202a (applies to §§ 53-202b -- 202k).

### **BARBITURATE-TYPE DRUGS**

"Barbiturate-type drugs" include barbituric acid and its salts, derivatives thereof and chemical compounds which are similar thereto in chemical structure or which are similar thereto in physiological effect, and which show a like potential for abuse, which are controlled substances under this chapter unless modified.

*Source:* General Statutes § 21a-240 (5) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

*Commentary:* See Defining the Controlled Substance in the Introduction to Drugs.

### **BENEFIT**

"Benefit" means monetary advantage, or anything regarded by the beneficiary as a monetary advantage, including benefit to any person or entity in whose welfare the beneficiary is interested.

*Source:* General Statutes § 53a-146 (2) (applies to Part XI: Bribery, Offenses against the Administration of Justice and Other Related Offenses, §§ 53a-147 -- 53a-167d).

### **BLIND PERSON**

"Blind person" means any person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if (his/her) visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

*Source:* General Statutes § 53a-320 (3) (applies to Part XXVI: Abuse of Elderly, Blind, or Disabled Persons or Persons with Intellectual Disabilities, §§ 53a-320 -- 53a-323).

*Commentary:* This definition incorporates the definition in § 1-1f (a).

## **BODY ARMOR**

"Body armor" means any material designed to be worn on the body and to provide bullet penetration resistance.

**Source:** General Statutes § 53-341b (c); General Statutes § 53a-217d (b).

## **BUILDING**

"Building," in addition to its ordinary meaning, includes any watercraft, aircraft, trailer, sleeping car, railroad car or other structure or vehicle or any building with a valid certificate of occupancy. Where a building consists of separate units, such as, but not limited to separate apartments, offices or rented rooms, any unit not occupied by the actor is, in addition to being a part of such building, a separate building.

**Source:** General Statutes § 53a-100 (a) (1) (applies to Part VIII: Burglary, Criminal Trespass, Arson, Criminal Mischief, §§ 53a-101 -- 53a-117m).

**Commentary:** The statutory definition of "building" encompasses the ordinary meaning of the word "building." "A 'building,' according to Black's Law Dictionary, is a 'structure designed for habitation, shelter, storage, trade, manufacture, religion, business, education, and the like.'" *State v. Perez*, 78 Conn. App. 610, 636 (2003), cert. denied, 271 Conn. 901 (2004); *State v. Ruocco*, 151 Conn. App. 7332, 752-55 (2014) (a stand-alone storage shed is a building); *State v. Domian*, 35 Conn. App. 714, 724-25 (1994), aff'd on other grounds, 235 Conn. 679 (1996) (an empty, vandalized or abandoned building is still a building within the statutory definition). It is also expansive, including more than the ordinary meaning of the word encompasses. *State v. Baker*, 195 Conn. 598, 600-603 (1985) (statutory definition clearly includes an automobile).

Whether an area of a building that is open to the public is a separate "building" depends on whether the public would be invited into that area or not. *State v. Hafford*, 252 Conn. 274, 311-14, cert. denied, 531 U.S. 855, 121 S.Ct. 136, 148 L.Ed.2d 89 (2000) (a utility room behind a gas station was a separate building); *State v. Russell*, 218 Conn. 273, 280 (1991) (area of grocery store containing merchandise of a high value enclosed by a tall metal folding gate from 9 p.m. to 9 a.m. when the store was open 24 hours was not a separate building from the store); *State v. Thomas*, 210 Conn. 199, 205-206 (1989) (area behind the counter at a convenience store was not a separate building); *State v. Stagnitta*, 74 Conn. App. 607, 615-17, cert. denied, 263 Conn. 902 (2003) (manager's office in restaurant was a separate building); see also *State v. Cochran*, 191 Conn. 180, 184-88 (1983) (although defendant was invited into the residence, the locked bedrooms of other tenants were separate buildings).

## **CANNABIS-TYPE SUBSTANCES**

"Cannabis-type substances" include all parts of any plant, or species of the genus cannabis or any infra specific taxon thereof whether growing or not; the seeds thereof; the resin extracted from any part of such a plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil or cake, or the sterilized seed of such plant which is

incapable of germination, or industrial hemp, as defined in 7 USC 5940, as amended from time to time. Included are cannabimon, cannabino, cannabidiol and chemical compounds which are similar to cannabimon, cannabino or cannabidiol in chemical structure or which are similar thereto in physiological effect, and which show a like potential for abuse, which are controlled substances under this chapter unless modified.

**Source:** General Statutes § 21a-240 (7) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a). Public Acts 2015, No. 202, § 1, modified this definition to include industrial hemp.

**Commentary:** See Defining the Controlled Substance in the Introduction to Drugs.

## **CARDHOLDER**

"Cardholder" or "holder of a card" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

**Source:** General Statutes § 53a-128a (a) (applies to Credit Card Crimes, §§ 53a-128b -- 128i).

## **CELLULAR RADIO TELEPHONE**

"Cellular radio telephone" means a wireless telephone authorized by the Federal Communications Commission to operate in the frequency bandwidth reserved for cellular radio telephones.

**Source:** General Statutes § 53a-187 (a) (3) (applies to § 53a-188, Tampering with Private Communications, and § 53a-189, Eavesdropping).

## **CHECK**

"Check" means any check, draft or similar sight order for the payment of money which is not postdated with respect to the time of issuance.

**Source:** General Statutes § 53a-118 (a) (8) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

## **CHILD PORNOGRAPHY**

"Child pornography" means any visual depiction including any photograph, film, videotape, picture or computer-generated image or picture, whether made or produced by electronic, digital, mechanical or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a person under sixteen years of age engaging in sexually explicit conduct, provided whether the subject of a visual depiction was a person under sixteen years of age at the time the visual depiction was created is a question to be decided by the trier of fact.

**Source:** General Statutes § 53a-193 (13) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

**Commentary:** Prior to 2004, this definition read "'Child pornography' means any material involving a live performance or photographic or other visual reproduction of a live performance which depicts a minor in a prohibited sexual act." In *State v. Ehlers*, 252 Conn. 579 (2002), the

Court concluded that the audience required for a live performance could be a single person, including the photographer. See *State v. Sorabella*, 277 Conn. 155, 188-89, cert. denied, 549 U.S. 821, 127 S.Ct. 131, 166 L.Ed.2d 36 (2006) (discussing statutory amendment and declining to overrule *Ehlers*).

### **COCAINE IN A FREE-BASE FORM**

"Cocaine in a free-base form" means any substance which contains cocaine, or any compound, isomer, derivative or preparation thereof, in a nonsalt form.

**Source:** General Statutes § 21a-240 (58) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** See Defining the Controlled Substance in the Introduction to Drugs.

### **COIN MACHINE**

"Coin machine" means a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle designed (A) to receive a coin or bill or token made for the purpose, and (B) in return for the insertion or deposit thereof, automatically to offer, to provide, to assist in providing or to permit the acquisition of some property or some service.

**Source:** General Statutes § 53a-143 (1) (applies to §§ 53a-144 -- 53a-145, Unlawful Use of Slugs).

### **COLLECT AN EXTENSION OF CREDIT**

"To collect an extension of credit" means to induce in any way any person to make repayment thereof.

**Source:** General Statutes § 53-389 (a) (5) (applies to Extortionate Credit Transactions, §§ 53-390 -- 53-392).

### **COMPLETE WRITTEN INSTRUMENT**

"Complete written instrument" means a written instrument which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof. An endorsement, attestation, acknowledgment or other similar signature or statement is deemed both a complete written instrument in itself and a part of the main instrument in which it is contained or to which it attaches.

**Source:** General Statutes § 53a-137 (2) (applies to Part X: Forgery and Related Offenses, §§ 53a-138 -- 53a-145).

### **COMPUTER**

**Definition 1:** "Computer" means a programmable, electronic device capable of accepting and processing data.

**Source:** General Statutes § 53a-250 (2) (applies to Part XXII: Computer-Related Offenses, §§ 53a-251 -- 53a-261 and § 52-570b).

**Definition 2:** "Computer" means an electronic, magnetic or optical device or group of devices that, pursuant to a computer program, human instruction or permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on computer data and can communicate the results to another computer or to a person. "Computer" includes any connected or directly related device, equipment or facility that enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device.

**Source:** General Statutes § 53-451 (1) (applies to Internet Crimes).

### **COMPUTER DATA**

"Computer data" means any representation of information, knowledge, facts, concepts or instructions that is being prepared or has been prepared and is intended to be processed, is being processed or has been processed in a computer or computer network. "Computer data" may be in any form, whether readable only by a computer or only by a human or by either, including, but not limited to, computer printouts, magnetic storage media, punched cards or stored internally in the memory of the computer.

**Source:** General Statutes § 53-451 (2) (applies to Internet Crimes).

### **COMPUTER NETWORK**

**Definition 1:** "Computer network" means (A) a set of related devices connected to a computer by communications facilities, or (B) a complex of two or more computers, including related devices, connected by communications facilities.

**Source:** General Statutes § 53a-250 (3) (applies to Part XXII: Computer-Related Offenses, §§ 53a-251 -- 53a-261).

**Definition 2:** "Computer network" means a set of related, remotely connected devices and any communications facilities including more than one computer with the capability to transmit data among them through the communications facilities.

**Source:** General Statutes § 53-451 (3) (applies to Internet Crimes).

### **COMPUTER OPERATION**

"Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and any combination thereof, and includes, but is not limited to, communication with, storage of data to or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A "computer operation" for a particular computer may also be any function for which that computer was generally designed.

**Source:** General Statutes § 53-451 (4) (applies to Internet Crimes).

### **COMPUTER PROGRAM**

**Definition 1:** "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.

**Source:** General Statutes § 53a-250 (4) (applies to Part XXII: Computer-Related Offenses, §§ 53a-251 -- 53a-261).

**Definition 2:** "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, causes the computer to perform one or more computer operations.

**Source:** General Statutes § 53-451 (5) (applies to Internet Crimes).

## **COMPUTER SERVICES**

**Definition 1:** "Computer services" includes, but is not limited to, computer access, data processing and data storage.

**Source:** General Statutes § 53a-250 (5) (applies to Part XXII: Computer-Related Offenses, §§ 53a-251 -- 53a-261).

**Definition 2:** "Computer services" means computer time or services including data processing services, Internet services, electronic mail services, electronic message services or information or data stored in connection therewith.

**Source:** General Statutes § 53-451 (6) (applies to Internet Crimes).

## **COMPUTER SOFTWARE**

**Definition 1:** "Computer software" means one or more computer programs, existing in any form, or any associated operational procedures, manuals or other documentation.

**Source:** General Statutes § 53a-250 (6) (applies to Part XXII: Computer-Related Offenses, §§ 53a-251 -- 53a-261).

**Definition 2:** "Computer software" means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.

**Source:** General Statutes § 53-451 (7) (applies to Internet Crimes).

## **COMPUTER SYSTEM**

"Computer system" means a computer, its software, related equipment, communications facilities, if any, and includes computer networks.

**Source:** General Statutes § 53a-250 (7) (applies to Part XXII: Computer-Related Offenses, §§ 53a-251 -- 53a-261).

## **CONTROLLED DRUGS**

"Controlled drugs" are those drugs which contain any quantity of a substance which has been designated as subject to the federal Controlled Substances Act, or which has been designated as a depressant or stimulant drug pursuant to federal food and drug laws, or which has been designated by the Commissioner of Consumer Protection pursuant to section 21a-243, as having a stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous

system and as having a tendency to promote abuse or psychological or physiological dependence, or both. Such controlled drugs are classifiable as amphetamine-type, barbiturate-type, cannabis-type, cocaine-type, hallucinogenic, morphine-type and other stimulant and depressant drugs. Specifically excluded from controlled drugs and controlled substances are alcohol, nicotine and caffeine.

**Source:** General Statutes § 21a-240 (8) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

### **CONTROLLED SUBSTANCE**

"Controlled substance" means a drug, substance, or immediate precursor in schedules I to V, inclusive, of the Connecticut controlled substance scheduling regulations adopted pursuant to section 21a-243.

**Source:** General Statutes § 21a-240 (9) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** Even though khat is not specifically listed as a controlled substance within the meaning of General Statutes § 21-243 (c) and the regulations, "as a matter of statutory construction, khat may be deemed a controlled substance by virtue of its containing the controlled substances cathinone and cathine." *State v. Gurreh*, 60 Conn. App. 166, 175, cert. denied, 255 Conn. 916 (2000).

### **CORRECTIONAL INSTITUTION**

"Correctional institution" means the facilities defined in section 1-1 and any other correctional facility established by the commissioner of correction.

**Source:** General Statutes § 53a-168 (1) (applies to Escape from Custody, §§ 53a-169 -- 53a-171).

**Commentary:** Section 1-1 (w) provides that "correctional institution" means a correctional facility administered by the commissioner of correction. (Note that prior to 2001, this section listed all of the existing correctional facilities.) Whether a particular facility is a correctional institution is a question of fact for the jury. *State v. Faust*, 237 Conn. 454, 470 (1996); *State v. Santiago*, 240 Conn. 97, 104 (1997), overruled on other grounds, *State v. Crawford*, 257 Conn. 769 (2001).

### **COUNTERFEIT SUBSTANCE**

"Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

**Source:** General Statutes § 21a-240 (10) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

## **CREDIT**

"Credit" means an arrangement or understanding with a bank or depository for the payment of a check, draft or order in full on presentation.

**Source:** General Statutes § 53a-118 (a) (15) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

## **CREDIT CARD**

"Credit card" means any instrument or device, whether known as a credit card, as a credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit.

**Source:** General Statutes § 53a-128a (b) (applies to Credit Card Crimes, §§ 53a-128b -- 128i).

**Commentary:** See generally *State v. Love*, 246 Conn. 402, 412 (1998) ("the jury reasonably could have found that the Sears card and the Southern New England Telephone calling cards constitute 'device[s] . . . issued . . . by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit' under § 53a- 128a (b)"); *State v. Henderson*, 47 Conn. App. 542, 554, cert. denied, 244 Conn. 908 (1998) ("[w]e conclude that it is a reasonable and logical inference for a juror to conclude that a card referred to as a 'credit card' enables one to receive things on credit").

## **CREDITOR**

"Creditor", with reference to any given extension of credit, refers to any person making such extension of credit, or to any person claiming by, under or through such person.

**Source:** General Statutes § 53-389 (a) (2) (applies to Extortionate Credit Transactions, §§ 53-390 -- 53-392).

## **CRIME OF VIOLENCE**

"Crime of violence" shall apply to and include any of the following-named crimes or an attempt to commit any of the same: Murder, manslaughter, kidnapping, sexual assault and sexual assault with a firearm, assault in the first or second degree, robbery, burglary, larceny and riot in the first degree.

**Source:** General Statutes § 53-202 (a) (2) (applies to § 53a-202, Machine Guns).

**Commentary:** This statutory definition is limited in application to the use of machine guns. Other statutes refer to crimes of violence, and the instructions for those offenses apply an ordinary meaning to the phrase: "A crime of violence is one in which physical force is exerted for the purpose of violating, injuring, damaging, or abusing another person."

## **CRIMINAL NEGLIGENCE**

A person acts with "criminal negligence" with respect to a result or to a circumstance described by a statute defining an offense when (he/she) fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and

degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

**Source:** General Statutes § 53a-3 (14) (applies to Penal Code).

**Commentary:** See Criminal Negligence, Instruction 2.3-5.

## **CUSTODY**

"Custody" means restraint by a public servant pursuant to an arrest or court order other than a probate court order directed against a person who is not in the custody of the commissioner of correction when such order is issued.

**Source:** General Statutes § 53a-168 (2) (applies to Escape from Custody, §§ 53a-169 -- 53a-171).

## **DANGEROUS INSTRUMENT**

"Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ.

It is important to note that the article need not be inherently dangerous; all that is required is that the article was capable of causing death or serious physical injury under the circumstances in which it was used. Any article or substance, without limitation and even though harmless under normal use, may be found by you to be a dangerous instrument if, under the circumstances of its use or threatened or attempted use, it is capable of producing serious physical injury or death. The state need not prove that in fact death or serious physical injury resulted, only that the instrument had that potential under the circumstances.

[<Insert as appropriate:> It includes

- a vehicle. "Vehicle" means a motor vehicle, a snowmobile, any aircraft, or any vessel equipped for propulsion by mechanical means or sail.
- a dog that has been commanded to attack, except a dog owned by a law enforcement agency of the state or any political subdivision thereof or of the federal government when such dog is in the performance of its duties under the direct supervision, care and control of an assigned law enforcement officer.]

**Source:** General Statutes § 53a-3 (7) (applies to Penal Code).

**Commentary:** No injury need to have actually been inflicted. *State v. Jones*, 173 Conn. 91, 95-96 (1977). It is the object's potential for inflicting injury under the specific circumstances in which it is used or threatened that makes the object a dangerous instrument. *State v. Schultz*, 100 Conn. App. 709, 721, cert. denied, 282 Conn. 926 (2007) (defendant broke a glass against another person's face).

The term means "a tool, implement or device that is external to, and separate and apart from, the perpetrator's body." *State v. LaFleur*, 307 Conn. 115, 140 (2012) (court improperly instructed

the jury that a fist can be a dangerous instrument). In *State v. McColl*, 74 Conn. App. 545, 554-55 (2003), the Appellate Court held that "feet and footwear" can be a dangerous instrument, but did not address whether feet alone could be a dangerous instrument, because it was clear that the defendant had been wearing shoes. See *id.*, 553 nn.7,8.

If the conduct of the defendant involves only a threat to use an object, the threat must rise to the level of a "true threat." See *State v. Cook*, 287 Conn. 237, 252 (2008).

The definition refers to the definition of "motor vehicle" in § 14-1 (50), which reads as follows: "Motor vehicle" means any vehicle propelled or drawn by any nonmuscular power, except aircraft, motor boats, road rollers, baggage trucks used about railroad stations or other mass transit facilities, electric battery-operated wheel chairs when operated by physically handicapped persons at speeds not exceeding fifteen miles per hour, golf carts operated on highways solely for the purpose of crossing from one part of the golf course to another, golf-cart-type vehicles operated on roads or highways on the grounds of state institutions by state employees, agricultural tractors, farm implements, such vehicles as run only on rails or tracks, self-propelled snow plows, snow blowers and lawn mowers, when used for the purposes for which they were designed and operated at speeds not exceeding four miles per hour, whether or not the operator rides on or walks behind such equipment, bicycles with helper motors as defined in section 14-286, special mobile equipment as defined in subsection (i) of section 14-165, mini-motorcycle, as defined in section 14-289j, and any other vehicle not suitable for operation on a highway.

## **DATA**

"Data" means information of any kind in any form, including computer software.

**Source:** General Statutes § 53a-250 (8) (applies to Part XXII: Computer-Related Offenses, §§ 53a-251 -- 53a-261).

## **DEADLY PHYSICAL FORCE**

"Deadly physical force" means physical force which can be reasonably expected to cause death or serious physical injury.

**Source:** General Statutes § 53a-3 (5) (applies to Penal Code).

**Commentary:** The act of pointing a loaded handgun at a person does not qualify as deadly physical force. *State v. Wayne*, 60 Conn. App. 761, 764-65 (2000).

## **DEADLY WEAPON**

A "deadly weapon" is defined by statute as any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles.

If the weapon is a firearm, it may be unloaded, but it must be in such condition that a shot may be discharged from it. Thus, if the weapon is loaded but not in working order, it is not a deadly weapon. If the weapon is unloaded but in working order, it is a deadly weapon.

**Source:** General Statutes § 53a-3 (6) (applies to Penal Code).

**Commentary:** The statutory definition explicitly excludes its application to either § 29-38 or § 53-206.

"Although both deadly weapons and firearms are designed for violence and are capable of inflicting death or serious bodily injury, firearms are limited to the most dangerous weapons and deadly weapons include a broader class." *State v. Hardy*, 278 Conn. 113, 132 (2006) (finding that an air pistol was a deadly weapon within the meaning of § 53a-3 (6)); *State v. Guzman*, 110 Conn. App. 263, 274-76 (2008), cert. denied, 290 Conn. 915-16 (2009) (concluding that a BB gun is a deadly weapon as a matter of law).

The phrase "from which a shot may be discharged" in the definition of "firearm" has been interpreted as requiring that the firearm is operable. *State v. Belanger*, 55 Conn. App. 2, 7, cert. denied, 251 Conn. 921, cert. denied, 530 U.S. 1205, 120 S.Ct. 2200, 147 L.Ed.2d 235 (1999).

See Note in definition of firearm for a discussion of the overlap among definitions.

## **DEBTOR**

"Debtor", with reference to any given extension of credit, refers to any person to whom such extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

**Source:** General Statutes § 53-389 (a) (3) (applies to Extortionate Credit Transactions, §§ 53-390 -- 53-392).

## **DELIVER and DELIVERY**

"Deliver or delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

**Source:** General Statutes § 21a-240 (11) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** See Drug Transactions in Introduction to Drugs.

## **DEPRIVE**

To "deprive" another of property means (A) to withhold it or cause it to be withheld from (him/her) permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to (him/her), or (B) to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

**Source:** General Statutes § 53a-118 (a) (3) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

**Commentary:** See glossary entry for "appropriate." The court should not instruct on both deprive and appropriate when the state is proceeding only one or the other theory in a larceny

prosecution. *State v. Spillane*, 54 Conn. App. 201, 210-20 (1999), aff'd on other grounds, 257 Conn. 750 (2001).

## **DISABILITY**

"Disability" means physical disability, mental disability or intellectual disability.

*Source:* General Statutes § 53a-181i (1) (applies to §§ 53a-181j -- 53a-181l, Intimidation Based on Bigotry or Bias).

## **DISABLED PERSON**

"Disabled person" means any person who has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.

*Source:* General Statutes § 53a-320 (4) (applies to Part XXVI: Abuse of Elderly, Blind, or Disabled Persons or Persons with Intellectual Disabilities, §§ 53a-320 -- 53a-323).

*Commentary:* This definition incorporates the definition in General Statutes § 1-1f (b).

## **DISPENSE and DISPENSER**

"Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for the delivery.

"Dispenser" means a practitioner who dispenses.

*Source:* General Statutes § 21a-240 (13) and (14) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

*Commentary:* See Drug Transactions in Introduction to Drugs.

## **DISTRIBUTE and DISTRIBUTOR**

"Distribute" means to deliver other than by administering or dispensing a controlled substance.

"Distributor" means a person who distributes and includes a wholesaler who is a person supplying or distributing controlled drugs which he himself has not produced or prepared to hospitals, clinics, practitioners, pharmacies, other wholesalers, manufacturers and federal, state and municipal agencies.

*Source:* General Statutes § 21a-240 (15) and (16) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

*Commentary:* See Drug Transactions in Introduction to Drugs.

## **DRAWER (OF A CHECK)**

"Drawer" of a check means a person whose name appears thereon as the primary obligor, whether the actual signature be that of (himself/herself) or of a person purportedly authorized to draw the check in (his/her) behalf.

**Source:** General Statutes § 53a-118 (a) (9) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

## **DRUG**

"Drug" means (A) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (B) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (C) substances, other than food, intended to affect the structure or any function of the body of man or animals; and (D) substances intended for use as a component of any article specified in subparagraph (A), (B) or (C) of this subdivision. It does not include devices or their components, parts or accessories.

**Source:** General Statutes § 21a-240 (17) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

## **DRUG DEPENDENCE**

"Drug dependence" means a psychoactive substance dependence on drugs as that condition is defined in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association.

**Source:** General Statutes § 21a-240 (18) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders IV* (4th Ed. 1994) p. 181, establishes the following criteria for substance dependence: A maladaptive pattern of substance use, leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring at any time in the same 12-month period:

- (1) tolerance, as defined by either of the following:
  - (a) a need for markedly increased amounts of the substance to achieve intoxication or desired effect;
  - (b) markedly diminished effect with continued use of the same amount of the substance;
- (2) withdrawal, as manifested by either of the following:
  - (a) the characteristic withdrawal syndrome for the substance (refer to Criteria A and B of the criteria sets for Withdrawal from the specific substances);
  - (b) the same (or a closely related) substance is taken to relieve or avoid withdrawal symptoms;
- (3) the substance is often taken in larger amounts or over a longer period than was intended;

- (4) there is a persistent desire or unsuccessful efforts to cut down or control substance use;
- (5) a great deal of time is spent in activities necessary to obtain the substance (e.g., visiting multiple doctors or driving long distances), use the substance (e.g., chain-smoking), or recover from its effects;
- (6) important social, occupational, or recreational activities are given up or reduced because of substance use;
- (7) the substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance (e.g., current cocaine use despite recognition of cocaine-induced depression, or continued drinking despite recognition that an ulcer was made worse by alcohol consumption).

"Under the factors established by the American Psychiatric Association in the mental disorders manual, an individual must exhibit three or more of the seven designated criteria to be classified as 'drug dependent.'" *State v. Stewart*, 77 Conn. App. 393, 401, cert. denied, 265 Conn. 906 (2003) (rejecting defendant's claim that a person who depends on drugs to treat a medical condition is "drug dependent").

### **DRUG-DEPENDENT PERSON**

"Drug-dependent person" means a person who has a psychoactive substance dependence on drugs as that condition is defined in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association.

**Source:** General Statutes § 21a-240 (19) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** See glossary entry for "drug dependence."

### **DRUG FACTORY**

"Drug factory" means any place used for the manufacturing, mixing, compounding, refining, processing, packaging, distributing, storing, keeping, holding, administering or assembling illegal substances contrary to the provisions of this chapter, or any building, rooms or location which contains equipment or paraphernalia used for this purpose.

**Source:** General Statutes § 21a-240 (20) (B) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

### **DRUG PARAPHERNALIA**

**Note:** This definition should be narrowly tailored to the evidence of the case. See *State v. Ruscoe*, 212 Conn. 223, 252-54, (1989), cert. denied, 493 U.S. 1084, 110 S.Ct. 1124, 107 L.Ed.2d 1049 (1990) (the court's definition was "very broad," but had not harmed the defendant because the court narrowed it by relating it to the specific evidence in the case).

"Drug paraphernalia" refers to equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing,

testing, analyzing, packaging, repackaging, storing, containing or concealing, or ingesting, inhaling or otherwise introducing into the human body, any controlled substance contrary to the provisions of this chapter including, but not limited to:

- (i) Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (ii) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
- (iii) isomerization devices used, intended for use in increasing the potency of any species of plant which is a controlled substance;
- (iv) testing equipment used, intended for use or designed for use in identifying or analyzing the strength, effectiveness or purity of controlled substances;
- (v) dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose used, intended for use or designed for use in cutting controlled substances;
- (vi) separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (vii) capsules and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;
- (viii) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;
- (ix) objects used, intended for use or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as: Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with screens, permanent screens, hashish heads or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs or ice pipes or chillers;

*<Include as appropriate:>*<sup>1</sup> In addition to all other logically relevant factors, you may consider the following in determining whether the item[s] (is / are) drug paraphernalia.

- (1) statements by an owner or by anyone in control of the object concerning its use;
- (2) the proximity of the object to any controlled substances;
- (3) the existence of any residue of controlled substances on the object;
- (4) evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal any controlled substance or inject, ingest, inhale, or introduce into the human body any controlled substance;
- (5) instructions, oral or written, provided with the object concerning its use with a controlled substance;
- (6) descriptive materials accompanying the object that explain or depict its use with a controlled substance;
- (7) national and local advertising concerning its use;
- (8) the manner in which the object is displayed for sale;

- (9) whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
  - (10) evidence of the ratio of sales of the object to the total sales of the business enterprise;
  - (11) the existence and scope of legitimate uses for the object in the community;
  - (12) expert testimony concerning its use.
- 

<sup>1</sup> General Statutes § 21a-270.

**Source:** General Statutes § 21a-240 (20) (A) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** "This statute uses expansive words of inclusion. . . . These phrases convey a clear intention that the items listed in the definition do not constitute an exhaustive or exclusive list." *State v. Jones*, 51 Conn. App. 126, 137 (1998), cert. denied, 247 Conn. 958 (1999).

Although it is unclear whether the language "intended for use or designed for use" in General Statutes § 21a-240 (20) (a), defining drug paraphernalia, refers to the defendant's mental state or the physical aspects of the object at issue, it is worth noting that similar language was construed in *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 501, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982), as referring to the physical aspects of the paraphernalia.

## **DWELLING**

"Dwelling" means a building which is usually occupied by a person lodging therein at night, whether or not a person is actually present.

**Source:** General Statutes § 53a-100 (a) (2) (applies to Part VIII: Burglary, Criminal Trespass, Arson, Criminal Mischief, §§ 53a-101 -- 53a-117m).

**Commentary:** This definition is explicitly incorporated into General Statutes § 53a-19, Self-Defense, and § 53a-20, Defense of Premises. See discussion of the Duty to Retreat in Instruction 2.9-3.

## **ELDERLY PERSON**

"Elderly person" means any person who is sixty years of age or older.

**Source:** General Statutes § 53a-320 (2) (applies to Part XXVI: Abuse of Elderly, Blind, or Disabled Persons or Persons with Intellectual Disabilities, §§ 53a-320 -- 53a-323).

## **ELECTRONIC COMMUNICATION DEVICE**

"Electronic communication device" means any electronic device that is capable of transmitting a visual depiction, including a computer, computer network and computer system, as those terms are defined in section 53a-250, and a cellular or wireless telephone.

**Source:** General Statutes § 53a-196h (b) (applies to Possessing or Transmitting Child Pornography by Minor, § 53a-196h).

### **ELECTRONIC DEFENSE WEAPON**

"Electronic defense weapon" means a weapon which by electronic impulse or current is capable of immobilizing a person temporarily, but is not capable of inflicting death or serious physical injury, including a stun gun or other conductive energy device.

**Source:** General Statutes § 53a-3 (20) (applies to Penal Code).

### **ELECTRONIC MAIL SERVICE PROVIDER**

"Electronic mail service provider" means any person who (A) is an intermediary in sending or receiving electronic mail, and (B) provides to end-users of electronic mail services the ability to send or receive electronic mail.

**Source:** General Statutes § 53-451 (8) (applies to Internet Crimes).

### **EMOTIONALLY DEPENDENT**

"Emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the patient or former patient is unable to withhold consent to sexual contact by or sexual intercourse with the psychotherapist.

**Source:** General Statutes § 53a-65 (11) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

### **EMPLOYEE OF AN EMERGENCY MEDICAL SERVICE ORGANIZATION**

"Employee of an emergency medical service organization" means an ambulance driver, emergency medical technician or paramedic. *<Insert appropriate definition:>*

- "Ambulance driver" means a person whose primary function is driving an ambulance.
- "Emergency medical technician" means an individual who has successfully completed the training requirements established by the commissioner and has been certified by the department of public health.
- "Paramedic" means a person licensed by the department of public health.

**Source:** General Statutes § 53a-3 (22) (applies to Penal Code).

**Commentary:** This definition incorporates the definitions in § 19a-175 (5), (6) and (15).

### **ENTERS OR REMAINS UNLAWFULLY**

A person "enters or remains unlawfully" in or upon premises when the premises, at the time of such entry or remaining, are not open to the public and when the actor is not otherwise licensed or privileged to do so.

**Source:** General Statutes § 53a-100 (b) (applies to §§ 53a-100aa -- 53a-106, inclusive).

**Commentary:** Note that this definition applies only to home invasion and burglary, not to criminal trespass. The criminal trespass statute prohibits a person from entering or remaining on premises "knowing that such person is not licensed or privileged to do so." The aspect of this definition that is not applicable to criminal trespass is that the premises "are not open to the public." The following caselaw discusses the other aspects of this definition, which should be equally applicable to the criminal trespass statutes.

Depending on the facts, unlawful entry and unlawful remaining may be conceptually distinct. "To enter unlawfully means to accomplish an entry by unlawful means, while to remain unlawfully means that the initial entering of the building . . . was lawful but the presence therein became unlawful because the right, privilege or license to remain was extinguished." *State v. Weaver*, 85 Conn. App. 329, 342, cert. denied, 271 Conn. 942 (2004); see also *State v. Clark*, 48 Conn. App. 812, 822, cert. denied, 245 Conn. 921 (1998); *State v. Edwards*, 10 Conn. App. 503, 513, cert. denied, 204 Conn. 808 (1987). In other cases, a person's acts of entering and remaining may be conceptually indistinct and inseparable. "[T]he defendant's conduct constituted one continuous course of unlawful conduct, namely, that he entered the apartment unlawfully and remained there without any change in his legal status. Under these circumstances, the unlawfulness of his entry determined the unlawfulness of his remaining. The two inexorably intertwined acts were conceptually indistinct." *State v. Delgado*, 19 Conn. App. 245, 249 (1989); see also *State v. Austin*, 59 Conn. App. 305, 310, cert. denied, 255 Conn. 912 (2000); *State v. Moales*, 41 Conn. App. 817, 824-26, cert. denied, 239 Conn. 908 (1996). The court's instruction should be tailored to the allegations. See *State v. Belton*, 190 Conn. 496, 502 (1983) (by giving an expansive instruction when the information only alleged that the defendant "unlawfully entered" the building, the court "effectively enlarged the offense as stated in the information").

"[A]n entry occurs with any penetration, however slight, of the space within the . . . building by the defendant, or by any part of his body." (Citations omitted; internal quotation marks omitted.) *State v. Weaver*, 85 Conn. App. 329, 342, cert. denied, 271 Conn. 942 (2004). Force is not required. "Forcible entry, with or without damage, is not an element of burglary." *State v. Garrett*, 42 Conn. App. 507, 513, cert. denied, 239 Conn. 928-29 (1996). It may, however, be relevant to the defendant's intent to commit a crime. *State v. Ward*, 76 Conn. App. 779, 799, cert. denied, 264 Conn. 918 (2004).

"The phrase 'licensed or privileged,' as used in General Statutes § 53a-100 (b) is meant as a unitary phrase, rather than as a reference to two separate concepts." *State v. Grant*, 6 Conn. App. 24, 30 (1986). "In general, a license or privilege to enter premises may derive from a transaction between the possessor and the actor, or may arise irrespective of any such transaction. Examples of those that arise from such a transaction involve situations in which there is a present consent, or there was a past consent, creating a license to enter. Examples of those that arise irrespective of previous transactions between the parties involves situations in which the possessor acted tortiously toward the actor, or when public policy creates the license or privilege." *Id.*, 30-31. See *State v. Hersey*, 78 Conn. App. 141, cert. denied, 266 Conn. 903 (2003) (entering a home in violation of a protective order is entering "without license or privilege"); *State v. Stagnitta*, 74 Conn. App. 607, 615-17, cert. denied, 263 Conn. 902 (2003)

(though an employee may have had the right to enter the office of the restaurant, that right did not extend to entering the office "displaying an eight to ten inch knife and demanding money").

### **EQUIVALENT PROPERTY**

"Equivalent property" means property that may be readily converted into, or exchanged for, United States or foreign currency or coin, including gold, silver or platinum bullion or coins, diamonds, emeralds, rubies, sapphires or other precious stones, stamps or airline tickets, or any other property that is intended to be so converted or exchanged.

**Source:** General Statutes § 53a-275 (2) (applies to Part XXIII: Money Laundering, §§ 53a-276 -- 53a-282).

### **EROTIC FONDLING**

"Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or if such person is a female, breast.

**Source:** General Statutes § 53a-193 (5) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

### **EXCHANGE**

"Exchange," in addition to its ordinary meaning, means purchase, sale, loan, pledge, gift, transfer, delivery, deposit, withdrawal or extension of credit.

**Source:** General Statutes § 53a-275 (4) (applies to Part XXIII: Money Laundering, §§ 53a-276 -- 53a-282).

### **EXPIRED CREDIT CARD**

"Expired credit card" means a credit card which is no longer valid because the term shown on it has elapsed.

**Source:** General Statutes § 53a-128a (c) (applies to Credit Card Crimes, §§ 53a-128b -- 128i).

### **EXPLOSIVE OR INCENDIARY DEVICE**

The term explosive or incendiary device means "(A) dynamite and all other forms of high explosives, (B) any explosive bomb, grenade, missile or similar device, and (C) any incendiary bomb or grenade, fire bomb or similar device, including any device which (i) consists of or includes a breakable container which contains a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and (ii) can be carried or thrown by an individual."

**Source:** General Statutes § 53-206b (a) (1).

## **EXTEND CREDIT**

"To extend credit" means to make or renew any loans, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

**Source:** General Statutes § 53-389 (a) (1) (applies to Extortionate Credit Transactions, §§ 53-390 -- 53-392).

## **EXTORTIONATE EXTENSION OF CREDIT**

An "extortionate extension of credit" is any extension of credit with respect to which it is the understanding of the creditor and the debtor, at the time such extension of credit is made, that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person.

**Source:** General Statutes § 53-389 (a) (6) (applies to Extortionate Credit Transactions, §§ 53-390 -- 53-392).

## **EXTORTIONATE MEANS**

An "extortionate means" is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation or property of any person.

**Source:** General Statutes § 53-389 (a) (7) (applies to Extortionate Credit Transactions, §§ 53-390 -- 53-392).

## **EXTREME INDIFFERENCE TO HUMAN LIFE**

"Indifference" means simply not caring. It means lacking any interest in a matter one way or the other. Extreme means existing in the highest or greatest possible degree. Extreme indifference is more than ordinary indifference. It is synonymous with excessive and is the greatest departure from the ordinary. What evinces an extreme indifference to human life is a question of fact.

**Commentary:** There is no statutory definition of "extreme indifference to human life," but its meaning has been extensively discussed in the case law. See *State v. McMahon*, 257 Conn. 544, 550-57 (2001), cert. denied, 534 U.S. 1130, 122 S.Ct. 1069, 151 L.Ed.2d 972 (2002) (discussing plain meaning and judicial interpretations of "extreme indifference to human life" and "grave risk of death"); see also *State v. Garcia*, 81 Conn. App. 294, 309-10 (2004) (distinguishing it from ordinary recklessness); *State v. Best*, 56 Conn. App. 742, 754-56, cert. denied, 253 Conn. 902 (2000) (discussing ordinary meaning of the terms); *State v. Bunker*, 27 Conn. App. 322 (1992) (distinguishing recklessness and 'aggravated recklessness' when offenses involving both were involved).

## **FALSELY ALTERS**

A person "falsely alters" a written instrument when

- (he/she), without the authority of any person entitled to grant it, changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter or transposition of matter or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer; or
- (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign the instrument.

**Source:** General Statutes § 53a-137 (6) (applies to Part X: Forgery and Related Offenses, §§ 53a-138 -- 53a-145).

## **FALSELY COMPLETES**

A person "falsely completes" a written instrument when

- (he/she), by adding, inserting or changing matter, transforms an incomplete written instrument into a complete written instrument, without the authority of any person entitled to grant it, so that such complete written instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer; or
- (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign the instrument.

**Source:** General Statutes § 53a-137 (5) (applies to Part X: Forgery and Related Offenses, §§ 53a-138 -- 53a-145).

## **FALSELY MAKES**

A person "falsely makes" a written instrument when

- (he/she) makes or draws a complete written instrument in its entirety, or makes or draws an incomplete written instrument that purports to be an authentic creation but is not authentic either because the ostensible maker or drawer is fictitious or because, if real, (he/she) did not authorize the making or drawing of the instrument; or
- (he/she) signs (his/her) own name to a written instrument, thereby falsely and fraudulently representing that (he/she) has authority to sign the instrument.

**Source:** General Statutes § 53a-137 (4) (applies to Part X: Forgery and Related Offenses, §§ 53a-138 -- 53a-145).

## **FINANCIAL INSTRUMENT**

"Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computerized representation thereof.

**Source:** General Statutes § 53-451 (9) (applies to Internet Crimes).

## **FIREARM**

A "firearm" is any sawed-off shotgun, machine gun, rifle, shotgun, pistol, revolver or other weapon, whether loaded or unloaded, from which a shot may be discharged. You must find that the firearm was operable at the time of the offense.

**Source:** General Statutes § 53a-3 (19) (applies to Penal Code).

**Commentary:** The phrase "from which a shot may be discharged" in the definition of "firearm" has been interpreted as requiring that the firearm is operable. The operability of the firearm is a factual finding for the jury. *State v. Belanger*, 55 Conn. App. 2, 7, cert. denied, 251 Conn. 921, cert. denied, 530 U.S. 1205, 120 S.Ct. 2200, 147 L.Ed.2d 235 (1999).

Note: The definition of "deadly weapon" in § 53a-3 (6) and the definition of "firearm" in § 53a-3 (19) have overlapping definitions. A deadly weapon is, in part, any weapon, whether loaded or unloaded, from which a shot may be discharged. A firearm is any of 6 enumerated weapons, plus "any other weapon," whether loaded or unloaded, from which a shot may be discharged. I.e., all firearms would fit the definition of a deadly weapon, and some deadly weapons would fit the definition of a firearm. Whether a particular weapon would reasonably come within one of these definitions is to be made on a case-by-case basis. See *State v. Grant*, 294 Conn. 151, 159-61 (2009) (BB gun could come within definition of firearm); *State v. Hart*, 118 Conn. App. 763, 776 (2009), cert. denied, 295 Conn. 908 (2010) (pellet gun could be a deadly weapon, a dangerous instrument, or a firearm).

## **FIREARM, FACSIMILE OF**

"Facsimile of a firearm" means (A) any nonfunctional imitation of an original firearm which was manufactured, designed and produced since 1898, or (B) any nonfunctional representation of a firearm other than an imitation of an original firearm, provided such representation could reasonably be perceived to be a real firearm. Such term does not include any look-a-like, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional BB or pellet-firing air gun that expels a metallic or paint-contained projectile through the force of air pressure.

**Source:** General Statutes § 53-206c (a) (1).

## **FIREFIGHTER**

"Firefighter" means any agent of a municipality whose duty it is to protect life and property therein as a member of a duly constituted fire department whether professional or volunteer.

**Source:** General Statutes § 53a-3 (10) (applies to Penal Code).

## **FORGED INSTRUMENT**

"Forged instrument" means a written instrument which has been falsely made, completed or altered.

**Source:** General Statutes § 53a-137 (6) (applies to Part X: Forgery and Related Offenses, §§ 53a-138 -- 53a-145).

## **FUNDS**

"Funds" means money or credit.

*Source:* General Statutes § 53a-118 (a) (13) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

## **GENDER IDENTITY OR EXPRESSION**

"Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's assigned sex at birth.

*Source:* General Statutes § 53a-181i (2) (applies to §§ 53a-181j - 181l, Intimidation Based on Bigotry or Bias).

## **GOVERNMENT**

"Government" includes any branch, subdivision or agency of the state or any locality within it.

*Source:* General Statutes § 53a-146 (4) (applies to Part XI: Bribery, Offenses against the Administration of Justice and Other Related Offenses, §§ 53a-147 -- 53a-167d).

## **HALLUCINOGENIC SUBSTANCES**

"Hallucinogenic substances" are psychodysleptic substances which assert a confusional or disorganizing effect upon mental processes or behavior and mimic acute psychotic disturbances. Exemplary of such drugs are mescaline, peyote, psilocyn and d-lysergic acid diethylamide, which are controlled substances under this chapter unless modified.

*Source:* General Statutes § 21a-240 (23) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

*Commentary:* See Defining the Controlled Substance in the Introduction to Drugs.

## **HAZARDOUS SUBSTANCE**

"Hazardous substance" means any physical, chemical, biological or radiological substance or matter which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health.

*Source:* General Statutes § 53a-61aa, Threatening in the First Degree; General Statutes § 53a-180aa (b), Breach of Peace in the First Degree.

## **HEALTH CARE EMPLOYEE**

"Health care employee" means any individual directly or indirectly employed by, or serving as a volunteer for, a health care employer, who (A) is involved in direct patient care, or (B) has direct contact with the patient or the patient's family when (i) collecting or processing information

needed for patient forms and record documentation, or (ii) escorting or directing the patient or the patient's family on the premises of the health care employer.

"Health care employer" means any institution, as defined in section 19a-490 of the general statutes, with fifty or more full or part-time employees. Health care employer includes a facility for the care or treatment of mentally ill persons or persons with substance abuse issues, a residential facility for persons with intellectual disability licensed pursuant to section 17a-227 of the general statutes, and a community health center, as defined in section 19a-490a of the general statutes.

*Source:* General Statutes § 19a-490q (a) (1) and (2) (applies to § 53a-167c).

**HEALTH CARE PROFESSIONAL**

"Health care professional" is used in General Statutes § 53a-71 (a) (7) (Sexual Assault in the Second Degree) and § 53a-73a (a) (5) (Sexual Assault in the Fourth Degree), but there is no definition of the term in the Penal Code. General Statutes § 19a-12a (a) (3) defines "health care professional" as including any person licensed or holding a permit pursuant to Title 20, chapter 370, 372, 373, 375, 375a, 376, 376a, 376b, 376c, 377, 378, 379, 379a, 380, 381, 381a, 383, 383a, 383b, 383c, 384a, 384b, 384c, 384d, 398 or 399. The following chart includes the specific statutes that define the various types of health care professionals and their licensing requirements.

<b>Chapter</b>	<b>Chapter Heading</b>	<b>Relevant Statutory Sections for Definitions and/or Licensing Requirements</b>
370	Medicine & Surgery	§§ 20-10, 20-12a (5), 20-12b, 20-12n
372	Chiropractic	§§ 20-24, 20-27
373	Natureopathy	§§ 20-34, 20-37
375	Podiatry	§§ 20-50, 20-54
375a	Athletic Training	§§ 20-65f , 20-65j
376	Physical Therapists	§§ 20-66, 20-70
376a	Occupational Therapists	§§ 20-74a, 20-74b
376b	Substance Abuse Counselors	§ 20-74s
376c	Radiographers & Radiologic Technologists	§ 20-74bb
377	Midwifery	§§ 20-86a, 20-86c
378	Nursing	§§ 20-87a, 20-93
379	Dentistry	§ 20-107
379a	Dental Hygienists	§ 20-126i
380	Optometry	§ 20-127
381	Opticians	§§ 20-145, 20-146
381a	Respiratory Care Practitioners	§§ 20-162n, 20-162o
383	Psychologists	§ 20-187a
383a	Marital & Family Therapists	§§ 20-195a, 20-195c

383b	Clinical Social Workers	§§ 20-195m, 20-195n
383c	Professional Counselors	§§ 20-195aa, 20-195dd
384a	Massage Therapists	§§ 20-206a, 20-206b
384b	Dietitian-Nutritionists	§§ 20-206m, 20-206n
384c	Acupuncturists	§§ 20-206aa, 20-206bb
384d	Paramedics	§§ 20-206jj, 20-206kk
398	Hearing Instrument Specialists	§§ 20-396, 20-398
399	Speech & Language Pathologists and Audiologists	§§ 20-408, 20-411

### **IMMEDIATE PRECURSOR**

"Immediate precursor" means a substance which the commissioner of consumer protection has found to be, and by regulation designates as being, the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used, in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

*Source:* General Statutes § 21a-240 (26) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

### **IMPAIRED BECAUSE OF MENTAL DISABILITY OR DISEASE**

Note: This term replaced "mentally defective" as of October 1, 2013.

"Impaired because of mental disability or disease" means that a person suffers from a mental disability or disease which renders such person incapable of appraising the nature of such person's conduct.

*Source:* General Statutes § 53a-65 (4) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

### **INCOMPLETE WRITTEN INSTRUMENT**

"Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

*Source:* General Statutes § 53a-137 (3) (applies to Part X: Forgery and Related Offenses, §§ 53a-138 -- 53a-145).

### **INSUFFICIENT FUNDS**

A drawer has "insufficient funds" with a drawee to cover a check when (he/she) has no funds or account whatever, or funds in an amount less than that of the check; and a check dishonored for "no account" shall also be deemed to have been dishonored for "insufficient funds."

**Source:** General Statutes § 53a-118 (a) (14) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

### **INTELLECTUAL DISABILITY**

"Intellectual disability" means a significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose and standardized on a significantly adequate population and administered by a person or persons formally trained in test administration; "significantly subaverage" means an intelligence quotient more than two standard deviations below the mean for the test; "adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group; and "developmental period" means the period of time between birth and the eighteenth birthday.

**Source:** General Statutes § 53a-181i (4) (applies to §§ 53a-181j - 181l, Intimidation Based on Bigotry or Bias).

**Commentary:** This statute incorporates the definition of "intellectual disability" in § 1-1g.

### **INTELLECTUALLY DISABLED PERSON**

"Intellectually disabled person" means any person with intellectual disability, as defined in section 1-1g.

**Source:** General Statutes § 53a-320 (5) (applies to Part XXVI: Abuse of Elderly, Blind, Disabled or Intellectually Disabled Persons, §§ 53a-320 -- 53a-323).

**Commentary:** See glossary entry for "intellectual disability."

### **INTENTIONALLY**

A person acts "intentionally" with respect to a result or to conduct described by a statute defining an offense when (his/her) conscious objective is to cause such result or to engage in such conduct.

**Source:** General Statutes § 53a-3 (11) (applies to Penal Code).

**Commentary:** See Intent: General and Specific, Instruction 2.3-1.

### **INTIMATE PARTS**

"Intimate parts" means the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts.

**Source:** General Statutes § 53a-65 (8) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

**Commentary:** On the application of this definition to § 53-21, Risk of Injury to Minors, see discussion of *State v. James G.*, 268 Conn. 382, 412-16 (2004) in Introduction to Risk of Injury to a Minor.

## **INTOXICATION**

"Intoxication" means a substantial disturbance of mental or physical capacities resulting from the introduction of substances into the body.

**Source:** General Statutes § 53a-7.

**Commentary:** The statutory definition applies to the defense of intoxication. See Intoxication, Instruction 2.7-1. In the context of driving under the influence, the following definition has been developed: A person is under the influence of (intoxicating liquor / any drug / both) when, as a result of drinking such beverage or introducing such drug or both into (his/her) system, (his/her) mental, physical, or nervous processes have become so affected that (he/she) lacks to an appreciable degree the ability to function properly in relation to the operation of a motor vehicle. See, e.g., *State v. Gordon*, 84 Conn. App. 519, 527, cert. denied, 271 Conn. 941 (2004); *State v. Sanko*, 62 Conn. App. 34, 41, cert. denied, 256 Conn. 905 (2001); *State v. Andrews*, 108 Conn. 209, 216 (1928).

## **ISSUER (OF A CREDIT CARD)**

"Issuer" means the person which issues a credit card, or its agent duly authorized for that purpose.

**Source:** General Statutes § 53a-128a (d) (applies to Credit Card Crimes, §§ 53a-128b -- 128i).

## **ISSUES (A CHECK)**

A person "issues" a check when, as a drawer or representative drawer thereof, (he/she) delivers it or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to such check. One who draws a check with intent that it be so delivered is deemed to have issued it if the delivery occurs.

**Source:** General Statutes § 53a-118 (a) (11) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

## **JUROR**

"Juror" is any person who has been drawn or summoned to serve or act as a juror in any court.

**Source:** General Statutes § 53a-146 (7) (applies to Part XI: Bribery, Offenses against the Administration of Justice and Other Related Offenses, §§ 53a-147 -- 53a-167d).

## **KNOWINGLY**

A person acts "knowingly" with respect to conduct or to a circumstance described by a statute defining an offense when (he/she) is aware that (his/her) conduct is of such nature or that such circumstance exists.

**Source:** General Statutes § 53a-3 (12) (applies to Penal Code).

**Commentary:** See Knowledge, Instruction 2.3-3.

## **LABOR OFFICIAL**

"Labor official" means any duly appointed or elected representative of a labor organization or any duly appointed or elected trustee or representative of an employee welfare trust fund.

**Source:** General Statutes § 53a-146 (5) (applies to Part XI: Bribery, Offenses against the Administration of Justice and Other Related Offenses, §§ 53a-147 -- 53a-167d).

## **MACHINE GUN**

A "machine gun" is a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a submachine gun.

**Source:** General Statutes § 53a-3 (15) (applies to Penal Code).

**Commentary:** See the glossary entry for "firearm."

General Statutes § 53-202 (a) (1), which regulates the possession of machine guns, contains the following definition: "Machine gun" shall apply to and include a weapon of any description, loaded or unloaded, which shoots, is designed to shoot or can be readily restored to shoot automatically more than one projectile, without manual reloading, by a single function of the trigger, and shall also include any part or combination of parts designed for use in converting a weapon into a machine gun and any combination of parts from which a machine gun can be assembled if such parts are in the possession of or under the control of a person.

## **MANUFACTURE**

"Manufacture" means the production, preparation, cultivation, growing, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for (his/her) own use or the preparation, compounding, packaging or labeling of a controlled substance: (A) By a practitioner as an incident to (his/her) administering or dispensing of a controlled substance in the course of (his/her) professional practice, or (B) by a practitioner, or by (his/her) authorized agent under (his/her) supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

**Source:** General Statutes § 21a-240 (28) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** See Drug Transactions in the Introduction to Drugs.

## **MARIJUANA**

"Marijuana" means all parts of any plant, or species of the genus cannabis or any infra specific taxon thereof, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Marijuana does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination, or industrial hemp, as defined in 7 USC 5940, as amended from time to time. Included are cannabinon, cannabinol or cannabidiol and chemical compounds which are similar to cannabinon, cannabinol or cannabidiol in chemical structure or which are similar thereto in physiological effect, and which show a like potential for abuse, which are controlled substances under this chapter unless modified.

*Source:* General Statutes § 21a-240 (29) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a). Public Acts 2015, No. 202, § 2, modified this definition to include industrial hemp.

*Commentary:* See Defining the Controlled Substance in the Introduction to Drugs.

## **MARTIAL ARTS WEAPON**

"Martial arts weapon" means a nunchaku, kama, kasari-fundo, octagon sai, tonfa or chinese star.

*Source:* General Statutes § 53a-3 (21) (applies to Penal Code).

## **MASTURBATION**

"Masturbation" means the real or simulated touching, rubbing or otherwise stimulating a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast, either by manual manipulation or with an artificial instrument.

*Source:* General Statutes § 53a-193 (8) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

## **MATERIAL**

"Material" means anything tangible which is capable of being used or adapted to arouse prurient, shameful or morbid interest, whether through the medium of reading, observation, sound or in any other manner. Undeveloped photographs, molds, printing plates, and the like, may be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

*Source:* General Statutes § 53a-193 (10) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

## **MECHANICAL OVERHEARING OF A CONVERSATION**

"Mechanical overhearing of a conversation" means the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment.

*Source:* General Statutes § 53a-187 (a) (2) (applies to § 53a-188, Tampering with Private Communications, and § 53a-189, Eavesdropping).

## **MENTAL DISABILITY**

"Mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.

*Source:* General Statutes § 53a-181i (3) (applies to §§ 53a-181j - 181l, Intimidation Based on Bigotry or Bias).

## **MENTAL RETARDATION**

The term "mental retardation" has been replaced by "intellectual disability." See INTELLECTUAL DISABILITY.

## **MENTALLY DEFECTIVE**

Note: As of October 1, 2013, this term is no longer used. It has been replaced with "impaired because of mental disability or disease."

"Mentally defective" means that a person suffers from a mental disease or defect which renders such person incapable of appraising the nature of such person's conduct.

*Source:* General Statutes § 53a-65 (4) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

## **MENTALLY INCAPACITATED**

"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent.

*Source:* General Statutes § 53a-65 (5) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

## **MENTALLY RETARDED PERSON**

The term "mentally retarded" has been replaced by "intellectually disabled." See INTELLECTUALLY DISABLED PERSON.

## **MONETARY INSTRUMENT**

"Monetary instrument" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, negotiable investment securities

or negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

**Source:** General Statutes § 53a-275 (1) (applies to Part XXIII: Money Laundering, §§ 53a-276 -- 53a-282).

### **MOTOR VEHICLE or VEHICLE**

**Definition 1:** "Vehicle" means a motor vehicle, a snowmobile, any aircraft, or any vessel equipped for propulsion by mechanical means or sail.

**Source:** General Statutes § 53a-3 (8) (applies to Penal Code).

**Commentary:** The statutory definition specifically incorporates General Statutes § 14-1 (50), which defines "motor vehicle" as any vehicle propelled or drawn by any nonmuscular power, except aircraft, motor boats, road rollers, baggage trucks used about railroad stations or other mass transit facilities, electric battery-operated wheel chairs when operated by physically handicapped persons at speeds not exceeding fifteen miles per hour, golf carts operated on highways solely for the purpose of crossing from one part of the golf course to another, golf-cart-type vehicles operated on roads or highways on the grounds of state institutions by state employees, agricultural tractors, farm implements, such vehicles as run only on rails or tracks, self-propelled snow plows, snow blowers and lawn mowers, when used for the purposes for which they were designed and operated at speeds not exceeding four miles per hour, whether or not the operator rides on or walks behind such equipment, bicycles with helper motors as defined in section 14-286, special mobile equipment as defined in subsection (i) of section 14-165, mini-motorcycle, as defined in section 14-289j, and any other vehicle not suitable for operation on a highway.

**Definition 2:** "Motor vehicle" includes all vehicles used on the public highways.

**Source:** General Statutes § 14-212 (5) (applies to Chapter 248, Vehicle Highway Use).

**Commentary:** General Statutes § 14-212 (10) provides that "vehicle" is synonymous with "motor vehicle." "Motor vehicle," as defined in § 14-212 includes any vehicle, including an all-terrain vehicle, that is operated on a public highway. *State v. Knybel*, 281 Conn. 707, 715-16 (2007). This includes a moped operated on a public highway. *State v. Fontaine*, 112 Conn. App. 190, 202, cert. denied, 290 Conn. 921 (2009).

### **MOTOR VEHICLE, COMMERCIAL**

"Commercial motor vehicle" means a vehicle designed or used to transport passengers or property, except a vehicle used for farming purposes in accordance with 49 CFR 383.3(d), fire fighting apparatus or an emergency vehicle, as defined in section 14-283, or a recreational vehicle in private use, which (A) has a gross vehicle weight rating of twenty-six thousand and one pounds or more, or a gross combination weight rating of twenty-six thousand and one pounds or more, inclusive of a towed unit or units with a gross vehicle weight rating of more than ten thousand pounds; (B) is designed to transport sixteen or more passengers, including the driver, or is designed to transport more than ten passengers, including the driver, and is used to transport students under the age of twenty-one years to and from school; or (C) is transporting

hazardous materials and is required to be placarded in accordance with 49 CFR 172, Subpart F, as amended, or any quantity of a material listed as a select agent or toxin in 42 CFR Part 73;

**Source:** General Statutes § 14-1 (13) (applies to Chapter 246, Motor Vehicle).

**Commentary:** Section 14-1 (32) defines "gross vehicle weight rating" or "GVWR" as "the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle. The GVWR of a combination (articulated) vehicle commonly referred to as the 'gross combination weight rating' or GCWR is the GVWR of the power unit plus the GVWR of the towed unit or units."

## **MOTOR VEHICLE, OPERATING**

A person "operates" a motor vehicle when, while in the vehicle, (he/she) intentionally does any act or makes use of any mechanical or electrical agency that alone or in sequence sets in motion the motive power of the vehicle.

**Commentary:** This definition of "operating a motor vehicle" originated in *State v. Swift*, 125 Conn. 399, 401-03 (1939). *Swift* established that "'operating' encompasses a broader range of conduct than does 'driving.'" *State v. Haight*, 279 Conn. 546, 551 (2007); *State v. Angueira*, 51 Conn. App. 782, 786 (1999). No intent to move the vehicle is required. *State v. Ducatt*, 22 Conn. App. 88, 92, cert. denied, 217 Conn. 804 (1990); see also *State v. Wiggs*, 60 Conn. App. 551, 554 (2000) (intent to drive is not an element of operation). Any step taken in the sequence necessary to engage the motive power of a vehicle is sufficient to come within the definition of "operating." *State v. Cyr*, 291 Conn. 49, 56-62 (2009) (starting the engine with a remote starter is sufficient); *State v. Haight*, supra, 279 Conn. 555-56 (inserting the key in the ignition is sufficient).

## **NARCOTIC SUBSTANCE**

"Narcotic substance" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (A) Morphine-type: (i) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate which are similar thereto in chemical structure or which are similar thereto in physiological effect and which show a like potential for abuse, which are controlled substances under this chapter unless modified; (ii) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (i), but not including the isoquinoline alkaloids of opium; (iii) opium poppy and poppy straw; (B) cocaine-type, coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivatives or preparation thereof which is chemically equivalent or identical with any of these substances or which are similar thereto in physiological effect and which show a like potential for abuse, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

**Source:** General Statutes § 21a-240 (30) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** See Defining the Controlled Substance in the Introduction to Drugs.

## **NIGHT**

"Night" means the period between thirty minutes after sunset and thirty minutes before sunrise.

**Source:** General Statutes § 53a-100 (a) (3) (applies to Part VIII: Burglary, Criminal Trespass, Arson, Criminal Mischief, §§ 53a-101 -- 53a-117m).

## **NUDE PERFORMANCE**

"Nude performance" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state in any play, motion picture, dance or other exhibition performed before an audience.

**Source:** General Statutes § 53a-193 (4) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

## **OBSCENE**

Any material or performance is "obscene" if, (A) taken as a whole, it predominantly appeals to the prurient interest, (B) it depicts or describes in a patently offensive way a prohibited sexual act, and (C) taken as a whole, it lacks serious literary, artistic, educational, political or scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or performance or the circumstances of its dissemination to be designed for some other specially susceptible audience. Whether a material or performance is obscene shall be judged by ordinary adults applying contemporary community standards. In applying contemporary community standards, the state of Connecticut is deemed to be the community.

**Source:** General Statutes § 53a-193 (1) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

**Commentary:** This definition encompasses the three-prong test established by *Miller v. California*, 413 U.S. 15, 24, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973); see *State v. Cimino*, 33 Conn. Sup. 680 (App. Sess.), cert. denied, 111 Conn. 747 (1976); *State v. Magee*, 32 Conn. Sup. 639 (App. Sess. 1975).

## **OBSCENE AS TO MINORS**

Material or a performance is "obscene as to minors" if it depicts a prohibited sexual act and, taken as a whole, it is harmful to minors. For purposes of this subdivision: (A) "Minor" means any person less than seventeen years old as used in section 53a-196 and less than sixteen years old as used in sections 53a-196a and 53a-196b, and (B) "harmful to minors" means that quality of any description or representation, in whatever form, of a prohibited sexual act, when (i) it predominantly appeals to the prurient, shameful or morbid interest of minors, (ii) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) taken as a whole, it lacks serious literary, artistic, educational, political or scientific value for minors.

**Source:** General Statutes § 53a-193 (2) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

### **OBTAIN**

"Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

**Source:** General Statutes § 53a-118 (a) (2) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

### **OFFICIAL PROCEEDING**

An "official proceeding" is any proceeding held or which may be held before any legislative, judicial, administrative or other agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner or notary or other person taking evidence in connection with any proceeding.

**Source:** General Statutes § 53a-146 (1) (applies to Part XI: Bribery, Offenses against the Administration of Justice and Other Related Offenses, §§ 53a-147 -- 53a-167d).

### **OPIATE**

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability; it does not include, unless specifically designated as controlled under this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextro-methorphan) but shall include its racemic and levorotatory forms.

**Source:** General Statutes § 21a-240 (33) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** See Defining the Controlled Substance in the Introduction to Drugs.

### **OPIUM POPPY**

"Opium poppy" means the plant of the species *papaver somniferum* l., except its seed.

**Source:** General Statutes § 21a-240 (34) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** See Defining the Controlled Substance in the Introduction to Drugs.

### **OTHER STIMULANT AND DEPRESSANT DRUGS**

"Other stimulant and depressant drugs" means controlled substances other than amphetamine-type, barbiturate-type, cannabis-type, cocaine-type, hallucinogenics and morphine-type which are found to exert a stimulant and depressant effect upon the higher functions of the central nervous system and which are found to have a potential for abuse and are controlled substances under this chapter.

**Source:** General Statutes § 21a-240 (36) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** See Defining the Controlled Substance in the Introduction to Drugs.

## **OWNER**

**Definition 1:** An "owner" means any person who has a right to possession superior to that of a taker, obtainer or withholder.

**Source:** General Statutes § 53a-118 (a) (5) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

**Commentary:** See *State v. Morant*, 242 Conn. 666, 671 (1997), overruled in part on other grounds, *Shabazz v. State*, 259 Conn. 811 (2002) (a person cannot be the owner of "contraband"). Contraband is defined in § 54-36a (1) as "any property, the possession of which is prohibited by any provision of the general statutes."

General Statutes § 53a-118 (b), (c), and (d) qualify the meaning of "owner" in the context of stolen property, jointly owned property, and security interests in property. See Larceny, Instruction 9.1-1.

**Definition 2:** "Owner" means an owner or lessee of a computer or a computer network, or an owner, lessee or licensee of computer data, computer programs or computer software.

**Source:** General Statutes § 53-451 (10) (applies to Internet Crimes).

## **PARTICIPATING PARTY**

"Participating party" means any person or any duly authorized agent of such person, which is obligated by contract to acquire from another person providing money, goods, services or anything else of value, a sales slip, sales draft or instrument for the payment of money, evidencing a credit card transaction, and from whom, directly or indirectly, the issuer is obligated by contract to acquire such sales slip, sales draft, instrument for the payment of money and the like.

**Source:** General Statutes § 53a-128a (e) (applies to Credit Card Crimes, §§ 53a-128b -- 128i).

## **PASSES (A CHECK)**

A person "passes" a check when, being a payee, holder or bearer of a check which previously has been or purports to have been drawn and issued by another, (he/she) delivers it, for a purpose other than collection, to a third person who thereby acquires a right with respect thereto.

**Source:** General Statutes § 53a-118 (a) (12) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

## **PEACE OFFICER**

"Peace officer" means *<select one or more of the following:>*

- a member of the division of state police within the department of emergency services and public protection or an organized local police department.
- a chief inspector or inspector in the division of criminal justice.
- a state marshal while exercising authority granted under any provision of the general statutes.
- a judicial marshal in the performance of the duties of a judicial marshal.
- a conservation officer or special conservation officer.<sup>1</sup>
- a constable who performs criminal law enforcement duties.
- a special policeman for state property.<sup>2</sup>
- a special policeman for investigating public assistance fraud.<sup>3</sup>
- a special policeman for utility and transportation companies.<sup>4</sup>
- an adult probation officer.
- an official of the department of correction authorized by the commissioner of correction to make arrests in a correctional institution or facility.
- any investigator in the investigations unit of the office of the state treasurer.
- a United States marshal or deputy marshal.
- any special agent of the federal government authorized to enforce the provisions of Title 21 of the United States Code.
- a member of a law enforcement unit of the Mashantucket Pequot Tribe or the Mohegan Tribe of Indians of Connecticut created and governed by a memorandum of agreement who is certified as a police officer by the Police Officer Standards and Training Council.

---

<sup>1</sup> As defined in General Statutes § 26-5.

<sup>2</sup> Appointed under General Statutes § 29-18.

<sup>3</sup> Appointed under General Statutes § 29-18a.

<sup>4</sup> Appointed under General Statutes § 29-19.

**Source:** General Statutes § 53a-3 (9) (applies to Penal Code). Public Acts 2015, No. 211, § 18, added a United States marshal or deputy marshal.

## **PERFORMANCE**

"Performance" means any play, motion picture, dance or other exhibition performed before an audience.

**Source:** General Statutes § 53a-193 (11) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

## **PERSON**

**Definition 1:** "Person" means a human being, and, where appropriate, a public or private corporation, a limited liability company, an unincorporated association, a partnership, a government or a governmental instrumentality.

**Source:** General Statutes § 53a-3 (1) (applies to Penal Code).

**Definition 2:** "Person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official.

**Source:** General Statutes § 53a-250 (9) (applies to Part XXII: Computer-Related Offenses, §§ 53a-251 -- 53a-261).

**Definition 3:** "Person" means any natural person, corporation, partnership, limited liability company, unincorporated business or other business entity.

**Source:** General Statutes § 53a-320 (1) (applies to §§ 53a-320 -- 53a-323).

**Definition 4:** "Person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official.

**Source:** General Statutes § 53-451 (11) (applies to Internet Crimes).

## **PERSON SELECTED TO BE A PUBLIC SERVANT**

"Person selected to be a public servant" means any person who has been nominated or appointed to be a public servant.

**Source:** General Statutes § 53a-146 (9) (applies to Part XI: Bribery, Offenses against the Administration of Justice and Other Related Offenses, §§ 53a-147 -- 53a-167d).

## **PHYSICAL DISABILITY**

"Physical disability" means any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, blindness, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.

**Source:** General Statutes § 53a-181i (5) (applies to §§ 53a-181j -- 181l, Intimidation Based on Bigotry or Bias)

## **PHYSICAL EVIDENCE**

"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.

**Source:** General Statutes § 53a-146 (8) (applies to Part XI: Bribery, Offenses against the Administration of Justice and Other Related Offenses, §§ 53a-147 -- 53a-167d).

## **PHYSICAL INJURY**

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

**Source:** General Statutes § 53a-3 (3) (applies to Penal Code).

**Commentary:** "The trial court's jury instructions need not include a definition of pain, leaving the jury to apply the common usage of the word." (Internal quotation marks omitted.) *State v. Henderson*, 37 Conn. App. 733, 743, cert. denied, 234 Conn. 912 (1995).

## **PHYSICALLY HELPLESS**

"Physically helpless" means that a person is (A) unconscious, or (B) for any other reason, is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact.

**Source:** General Statutes § 53a-65 (6) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

**Commentary:** See *State v. Fourtin*, 307 Conn. 186, 211 (2012) (state presented insufficient evidence that the complainant was either unconscious or so uncommunicative that she was physically incapable of communicating her lack of consent); *State v. Hufford*, 205 Conn. 386, 398-99 (1987) (court improperly charged on physical helplessness because the victim had repeatedly told the defendant to stop touching her, indicating that she was able to communicate her unwillingness to the act); *State v. Solek*, 66 Conn. App. 72, 79, cert. denied, 258 Conn. 941 (2001) (victim was physically helpless at the time of the assault when defendant murdered her and then sexually assaulted her).

## **PISTOL or REVOLVER**

A "pistol" or "revolver" is any firearm having a barrel less than twelve inches.

**Source:** General Statutes § 53a-3 (18) (applies to Penal Code); General Statutes § 29-27 (applies to §§ 29-28 -- 29-38).

**Commentary:** Whether operability of the pistol or revolver is a requirement of the offense depends on whether the offense applies the definition in § 53a-3 (18) or § 29-27. The definition in § 29-27 has been held not to incorporate the definition of "firearm" from § 53a-3 (19) and therefore not to require operability. *State v. Delossantos*, 211 Conn. 258, 273-75, cert. denied, 493 U.S. 866, 110 S.Ct. 188, 107 L.Ed.2d 142 (1989). This rationale was applied in *State v. Banks*, 59 Conn. App. 112, 130-31, cert. denied, 254 Conn. 950 (2000), to find that operability is not an element of § 53a-217c because that statute specifically refers to the definition of "pistol or revolver" in § 29-27. See also *State v. Slade*, 97 Conn. App. 404, 410 n.6, cert. denied, 280 Conn. 931 (2006) (neither § 29-35 (a), § 29-38 (a), or § 53a-217c have operability as an element); *State v. Bradley*, 39 Conn. App. 82, 90 (1995), cert. denied, 236 Conn. 901 (1996) (operability is not an element of § 29-38, but is an element of § 53a-217); *State v. Carpenter*, 19 Conn. App. 48, 59, cert. denied, 213 Conn. 804 (1989) (operability is an element of § 53a-212 and § 53a-217). See glossary entry for "firearm."

Failure to instruct on the barrel length of a pistol or revolver is reversible error. *State v. Norwood*, 47 Conn. App. 586, 590 (1998) (having a pistol in a motor vehicle); *State v. Hamilton*, 30 Conn. App. 68, 74-78, aff'd, 228 Conn. 234 (1994) (carrying a pistol without a permit). Direct numerical evidence of the length of the barrel of a firearm is not required. *State v. Rogers*, 50 Conn. App. 467, 475, cert. denied, 247 Conn. 942 (1998); *State v. Crosby*, 36 Conn. App. 805, 820-21, cert. denied, 232 Conn. 921 (1995).

## **POPPY STRAW**

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

*Source:* General Statutes § 21a-240 (42) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

*Commentary:* See Defining the Controlled Substance in the Introduction to Drugs.

## **POSSESS**

"Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property.

*Source:* General Statutes § 53a-3 (2) (applies to Penal Code).

*Commentary:* See Possession, Instruction 2.11-1.

## **PRESCRIBE and PRESCRIPTION**

"Prescribe" means order or designate a remedy or any preparation containing controlled substances.

"Prescription" means a written, oral or electronic order for any controlled substance or preparation from a licensed practitioner to a pharmacist for a patient.

*Source:* General Statutes § 21a-240 (44) and (45) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a). Public Acts 2009, No. 09-22, § 3, modified the definition of "prescription" to include electronic orders, effective October 1, 2009.

*Commentary:* See Drug Transactions in the Introduction to Drugs.

## **PRIVATE PERSONAL DATA**

"Private personal data" means data concerning a natural person which a reasonable person would want to keep private and which is protectable under law.

*Source:* General Statutes § § 53a-250 (10) (applies to Part XXII: Computer-Related Offenses, §§ 53a-251 -- 53a-261).

## **PRODUCTION**

"Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

**Source:** General Statutes § 21a-240 (46) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

## **PROHIBITED SEXUAL ACT**

"Prohibited sexual act" means erotic fondling, nude performance, sexual excitement, sado-masochistic abuse, masturbation or sexual intercourse.

**Source:** General Statutes § 53a-193 (3) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

## **PROMOTE**

"Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, advertise, produce, direct or participate in.

**Source:** General Statutes § 53a-193 (12) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

## **PROPERTY**

**Definition 1:** "Property" means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

**Source:** General Statutes § 53a-118 (a) (1) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

**Definition 2:** "Property" means anything of value, including data.

**Source:** General Statutes § 53a-250 (11) (applies to Part XXII: Computer-Related Offenses, §§ 53a-251 -- 53a-261).

**Definition 3:** (2) "Property" means: (A) Real property; (B) computers and computer networks; (C) financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are: (i) Tangible or intangible; (ii) in a format readable by humans or by a computer; (iii) in transit between computers or within a computer network or between any devices which comprise a computer; or (iv) located on any paper or in any device on which it is stored by a computer or by a human; and (D) computer services.

**Source:** General Statutes § 53-451 (12) (applies to Internet Crimes).

## **PROSTITUTION, ADVANCING**

A person "advances prostitution" when, acting other than as a prostitute or as a patron thereof, (he/she) knowingly causes or aids a 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 institute, aid or facilitate an act or enterprise of prostitution.

**Source:** General Statutes § 53a-85 (1) (applies to §§ 53a-86 -- 53a-89, Promoting Prostitution).

### **PROSTITUTION, PROFITING FROM**

A person "profits from prostitution" when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, (he/she) accepts or receives money or other property pursuant to an agreement or understanding with any person whereby (he/she) participates or is to participate in the proceeds of prostitution activity.

**Source:** General Statutes § 53a-85 (2) (applies to §§ 53a-86 -- 53a-89, Promoting Prostitution).

### **PSYCHOTHERAPIST**

"Psychotherapist" means a physician, psychologist, nurse, substance abuse counselor, social worker, clergyman, marital and family therapist, mental health service provider, hypnotist or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

**Source:** General Statutes § 53a-65 (9) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

### **PSYCHOTHERAPY**

"Psychotherapy" means the professional treatment, assessment or counseling of a mental or emotional illness, symptom or condition.

**Source:** General Statutes § 53a-65 (10) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

### **PUBLIC LAND**

"Public land" means a state park, state forest or municipal park or any other publicly-owned land that is open to the public for active or passive recreation.

**Source:** General Statutes § 53a-100 (a) (4) (applies to Part VIII: Burglary, Criminal Trespass, Arson, Criminal Mischief, §§ 53a-101 -- 53a-117m).

### **PUBLIC SERVANT**

"Public servant" is an officer or employee of government or a quasi-public agency, as defined in section 1-120, elected or appointed, and any person participating as advisor, consultant or otherwise, paid or unpaid, in performing a governmental function.

**Source:** General Statutes § 53a-146 (3) (applies to Part XI: Bribery, Offenses against the Administration of Justice and Other Related Offenses, §§ 53a-147 -- 53a-167d).

**Commentary:** "Public servant" can mean any government official. *State v. Giorgio*, 2 Conn. App. 204, 209-10 (1984); see also *State v. Guadalupe*, 66 Conn. App. 819, 824 (2001), cert. denied, 259 Conn. 907 (2002).

"Quasi-public agency" was added by Public Acts, Spec. Sess, June 11, 2008, No. 08-3, § 7, effective October 1, 2008. General Statutes § 1-120 defines "quasi-public agency" as "the Connecticut Development Authority, Connecticut Innovations, Incorporated, Connecticut Health and Educational Facilities Authority, Connecticut Higher Education Supplemental Loan Authority, Connecticut Housing Finance Authority, Connecticut Housing Authority, Connecticut Resources Recovery Authority, Capital City Economic Development Authority and Connecticut Lottery Corporation."

### **PUBLIC TRANSIT EMPLOYEE**

"Public transit employee" means a person employed by the state, a political subdivision of the state, a transit district formed under chapter 103a or a person with whom the Commissioner of Transportation has contracted in accordance with section 13b-34 to provide transportation services who operates a vehicle or vessel providing public rail service, ferry service or fixed route bus service or performs duties directly related to the operation of such vehicle or vessel.

*Source:* General Statutes § 53a-167c (a) (applies only to § 53a-167c).

### **RAILROAD PROPERTY**

"Railroad property" means all tangible property owned, leased or operated by a railroad carrier including, but not limited to, a right-of-way, track, roadbed, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal or any other structure or appurtenance or equipment owned, leased or used in the operation of a railroad carrier including a train, locomotive, engine, railroad car, signals or safety device or work equipment or rolling stock.

*Source:* General Statutes § 53a-3 (23) (applies to Penal Code).

### **RECEIVE**

*Definition 1:* To "receive" means to acquire possession, control or title, or to lend on the security of the property.

*Source:* General Statutes § 53a-118 (a) (6) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

*Definition 2:* "Receives" or "receiving" means acquiring possession, custody or control.

*Source:* General Statutes § 53a-128a (f) (applies to Credit Card Crimes, §§ 53a-128b -- 128i).

### **RECKLESSLY**

A person acts "recklessly" with respect to a result or to a circumstance described by a statute defining an offense when (he/she) is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

*Source:* General Statutes § 53a-3 (13) (applies to Penal Code).

*Commentary:* See Recklessness, Instruction 2.3-4.

## **RELATIVE**

"Relative" means a parent, ancestor, brother, sister, uncle or aunt.

*Source:* General Statutes § 53a-91 (3) (applies to Part VII: Kidnapping and Related Offenses, §§ 53a-92 -- 53a-99).

## **REPAYMENT**

"Repayment" of any extension of credit includes the repayment, satisfaction or discharge, in whole or in part, of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with such extension of credit.

*Source:* General Statutes § 53-389 (a) (4) (applies to Extortionate Credit Transactions, §§ 53-390 -- 53-392).

## **REPRESENTATIVE DRAWER**

"Representative drawer" means a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor.

*Source:* General Statutes § 53a-118 (a) (10) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

## **RESTRAIN**

"Restrain" means to restrict a person's movements intentionally and unlawfully in such a manner as to interfere substantially with (his/her) liberty by moving (him/her) from one place to another, or by confining (him/her) either in the place where the restriction commences or in a place to which (he/she) has been moved, without consent. As used herein "without consent" means, but is not limited to, (A) deception and (B) any means whatever, including acquiescence of the victim, if (he/she) is a child less than sixteen years old or an incompetent person and the parent, guardian or other person or institution having lawful control or custody of (him/her) has not acquiesced in the movement or confinement.

*Source:* General Statutes § 53a-91 (1) (applies to Part VII: Kidnapping and Related Offenses, §§ 53a-92 -- 53a-99).

*Commentary:* See glossary entry for "abduct."

## **RESTRICTED DRUGS OR SUBSTANCES**

"Restricted drugs or substances" are the following substances without limitation and for all purposes: Datura stramonium; hyoscyamus niger; atropa belladonna, or the alkaloids atropine; hyoscyamine; belladonnine; apatropine; or any mixture of these alkaloids such as daturine, or the synthetic homatropine or any salts of these alkaloids, except that any drug or preparation containing any of the above-mentioned substances which is permitted by federal food and drug laws to be sold or dispensed without a prescription or written order shall not be a controlled substance; amyl nitrite; the following volatile substances to the extent that said chemical

substances or compounds containing said chemical substances are sold, prescribed, dispensed, compounded, possessed or controlled or delivered or administered to another person with the purpose that said chemical substances shall be breathed, inhaled, sniffed or drunk to induce a stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system: Acetone; benzene; butyl alcohol; butyl nitrate and its salts, isomers, esters, ethers or their salts; cyclohexanone; dichlorodifluoromethane; ether; ethyl acetate; formaldehyde; hexane; isopropanol; methanol; methyl cellosolve acetate; methyl ethyl ketone; methyl isobutyl ketone; nitrous oxide; pentochlorophenol; toluene; toluol; trichloroethane; trichloroethylene; 1,4 butanediol.

*Source:* General Statutes § 21a-240 (49) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

### **REVOKED CREDIT CARD**

"Revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

*Source:* General Statutes § 53a-128a (g) (applies to Credit Card Crimes, §§ 53a-128b -- 128i).

### **REVOLVER, see Pistol or Revolver.**

### **RIFLE**

A "rifle" is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

*Source:* General Statutes § 53a-3 (16) (applies to Penal Code).

*Commentary:* See glossary entry for "firearm."

### **SADO-MASOCHISTIC ABUSE**

"Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

*Source:* General Statutes § 53a-193 (7) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

### **SALE**

"Sale" is any form of delivery which includes barter, exchange or gift, or offer therefor, and each such transaction made by any person whether as principal, proprietor, agent, servant or employee.

*Source:* General Statutes § 21a-240 (50) (applies to Chapter 420b: Dependency Producing Drugs, §§ 21a-240 -- 21a-283a).

**Commentary:** Under this definition, there is no requirement that the narcotics be delivered for consideration. *State v. Wassil*, 233 Conn. 174, 193 (1995); *State v. Theriault*, 38 Conn. App. 815, 824-25, cert. denied, 235 Conn. 922 (1995). It is sufficient to define it as "any form of delivery." *Id.*, 192.

There is a distinction between sale and possession with the intent to sell. *State v. Estrada*, 71 Conn. App. 344, 356-57, cert. denied, 261 Conn. 934 (2002). "A person may possess narcotics without intending to sell them, or possess narcotics legally and sell them illegally, or sell narcotics without possessing them, making the crimes different offenses. . . . The offense of possession of a narcotic substance with intent to sell requires proof that the defendant possessed a narcotic substance. There is no such requirement for the offense of the sale of a narcotic substance." (Citation omitted; internal quotation marks omitted.) *State v. Mahon*, 53 Conn. App. 231, 235 (1999). "To prove sale of a narcotic substance, the state need not prove beyond a reasonable doubt that the defendant knew the character of the substance. . . . [T]he state need not prove that the defendant possessed the substance in question. . . . The state need only prove that the defendant knowingly sold the substance to another person and that the substance sold was a narcotic." *Id.*, 236.

## **SCHOOL EMPLOYEE**

"School employee" means: (A) A teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or a private elementary, or middle or high school or working in a public or private elementary, or middle or high school; or (B) any other person who, in the performance of his or her duties, has regular contact with students and who provides services to or on behalf of students enrolled in (i) a public elementary, middle or high school, pursuant to a contract with the local or regional board of education, or (ii) a private elementary, middle or high school, pursuant to a contract with the supervisory agent of such private school.

**Source:** General Statutes § 53a-65 (13) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a). Public Acts 2009, No. 09-242, § 1, modified the definition, effective October 1, 2009, to add subsection (B).

**Commentary:** See *State v. McKenzie-Adams*, 281 Conn. 486 (2007), cert. denied, 76 U.S.L.W. 3162 (U.S. Oct. 1, 2007) (No. 07-53) (prohibition against sexual intercourse between school employee and student does not violate constitutionally guaranteed right of privacy).

## **SERIOUS PHYSICAL INJURY**

"Serious physical injury" is something more serious than mere physical injury, which is defined as "impairment of physical condition or pain." It is more than a minor or superficial injury. It is defined by statute as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ."

**Source:** General Statutes § 53a-3 (4) (applies to Penal Code).

**Commentary:** The forms of "serious physical injury" are not distinct, alternative methods of committing a crime. The jurors need only determine unanimously whether the victim suffered a serious physical injury; they do not have to agree on which type of injury. *State v. Wynter*, 19 Conn. App. 654, 666, cert. denied, 213 Conn. 802 (1989).

Serious physical injury does not need to be permanent. *State v. Denson*, 67 Conn. App. 803, 811, cert. denied, 260 Conn. 915 (2002); see also *State v. Aponte*, 50 Conn. App. 114, 121 (1998), rev'd in part on other grounds, 249 Conn. 735 (1999) (medical testimony that injuries put victim at risk of death at the time and temporarily impaired her vision); *State v. Rumore*, 28 Conn. App. 402, 415, cert. denied, 224 Conn. 906 (1992) (unconsciousness was a serious impairment); see also *State v. Rossier*, 175 Conn. 204 (1978) (evidence of emotional trauma precipitated by incident was insufficient to support conclusion that serious physical injury had been inflicted).

## **SERVICE**

"Service" includes, but is not limited to, labor, professional service, public utility and transportation service, the supplying of hotel accommodations, restaurant services, entertainment, and the supplying of equipment for use, but does not include school accommodations provided by a school district to (A) a child or an emancipated minor, or (B) a pupil eighteen years of age or older who was a homeless person at the time of the offense.

**Source:** General Statutes § 53a-118 (a) (7) (applies to Part IX: Larceny, Robbery and Related Offenses, §§ 53a-119 -- 53a-136a).

**Commentary:** "Homeless person" is defined in § 8-355 (3) as "means any person who does not have overnight shelter or sufficient income or resources to secure such shelter."

## **SEXUAL CONTACT**

"Sexual contact" means any contact with the intimate parts of a person not married to the actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person or any contact of the intimate parts of the actor with a person not married to the actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person.

**Source:** General Statutes § 53a-65 (3) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

**Commentary:** "To have 'sexual contact' as defined by the statute it is irrelevant whether the respondent's contact with the victim was through clothing or with bare skin." *In re Mark. R.*, 59 Conn. App. 538, 542 (2000); *State v. Eric T.*, 8 Conn. App. 607, 613 (1986).

The common-law marital exemption as a defense to compelled sexual intercourse was applied to sexual contact in *State v. Huey*, 1 Conn. App. 724, 730-32 (1984), aff'd on other grounds, 199 Conn. 121 (1986), but the Appellate Court in *State v. Scott*, 11 Conn. App. 102, 118 n.6, cert. denied, 204 Conn. 811 (1987), doubted the propriety of that assumption.

On the application of this definition to § 53-21, Risk of Injury to Minors, see discussion of *State v. James G.*, 268 Conn. 382, 412-16 (2004) in Introduction to Risk of Injury to a Minor.

## **SEXUAL EXCITEMENT**

"Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

**Source:** General Statutes § 53a-193 (6) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

## **SEXUAL INTERCOURSE**

**Definition 1:** "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Its meaning is limited to persons not married to each other. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.

**Source:** General Statutes § 53a-65 (2) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

**Commentary:** The definition of sexual intercourse includes four alternative means of performing sexual intercourse that are not conceptually distinct. See *State v. Anderson*, 211 Conn. 18, 35 (1989) ("[t]he several ways in which sexual intercourse may be committed under General Statutes § 53a-65 (2) are only one conceptual offense"); see also *State v. Griffin*, 97 Conn. App. 169, 181-85, cert. denied, 280 Conn. 925 (2006) (the court's instruction that sexual intercourse included vaginal intercourse or cunnilingus did not constitute a non-unanimous instruction of two conceptually distinct alternatives).

"[T]he phrase 'penetration, however slight,' evinced an intent to incorporate, into our statutory law, the common-law least penetration doctrine." *State v. Albert*, 252 Conn. 795, 804 (2000) (concluding that penetration, however slight, of the external genitalia is sufficient to constitute vaginal intercourse). *Albert* has a lengthy discussion of the legislative history of this definition. See also *State v. David N.J.*, 301 Conn. 122, 154-60 (2011) (supplemental instruction on the meaning of penetration).

In *State v. Scott*, 256 Conn. 517, 529 (2001), the Supreme Court held that the trial court's failure to instruct the jury that penetration is an element of the crime of sexual assault in the first degree by fellatio deprived the defendant of a fair trial. The court concluded that "the penetration requirement is met, for purposes of first degree sexual assault by fellatio, when a perpetrator forcibly inserts his penis into the victim's mouth. . . . The act of licking a penis, by contrast, does not satisfy the penetration element of §§ 53a-70 and 53a-65 (2)." *Id.*, 534-35.

The Court concluded in *State v. Kish*, 186 Conn. 757, 762-66 (1982), that the definition of sexual intercourse specifically omits cunnilingus when discussing penetration because penetration is not an element of the crime when cunnilingus is charged.

The limitation specified in the definition that it only applies to "persons not married to each other" incorporates the common-law marriage exemption to a charge of rape. See *State v. Scott*, 11 Conn. App. 102, 112-19, cert. denied, 204 Conn. 811 (1987). Note that General Statutes § 53a-70b, Sexual assault in spousal or cohabiting relationship, contains its own definition of sexual intercourse, which omits this limitation.

**Definition 2:** "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

**Source:** General Statutes § 53a-193 (9) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

## **SEXUALLY EXPLICIT CONDUCT**

"Sexually explicit conduct" means actual or simulated (A) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal physical contact, whether between persons of the same or opposite sex, or with an artificial genital, (B) bestiality, (C) masturbation, (D) sadistic or masochistic abuse, or (E) lascivious exhibition of the genitals or pubic area of any person.

**Source:** General Statutes § 53a-193 (14) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

## **SHOTGUN**

A "shotgun" is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

**Source:** General Statutes § 53a-3 (17) (applies to Penal Code).

**Commentary:** See glossary entry for "firearm." A "sawed-off shotgun" is a shotgun with a barrel that measures less than eighteen inches or an overall length of less than twenty-six inches. General Statutes § 53a-211.

## **SLUG**

"Slug" means an object or article which, by virtue of its size, shape or any other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill or token.

**Source:** General Statutes § 53a-143 (2) (applies to §§ 53a-144 -- 53a-145, Unlawfully Using Slugs).

## **THERAPEUTIC DECEPTION**

"Therapeutic deception" means a representation by a psychotherapist that sexual contact by or sexual intercourse with the psychotherapist is consistent with or part of the patient's treatment.

**Source:** General Statutes § 53a-65 (12) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

## **UNLAWFULLY**

"Unlawfully" means not specifically authorized by law.

**Source:** General Statutes § 53a-187 (a) (3) (applies to § 53a-188, Tampering with Private Communications, and § 53a-189, Eavesdropping).

## **USE OF FORCE**

"Use of force" means: (A) use of a dangerous instrument; or (B) use of actual physical force or violence or superior physical strength against another person.

**Source:** General Statutes § 53a-65 (7) (applies to Part VI: Sex Offenses, §§ 53a-67 -- 53a-90a).

## **USES A COMPUTER**

A person "uses" a computer or computer network when such person *<insert as appropriate>*:

- attempts to cause or causes a computer or computer network to perform or to stop performing computer operations,
- attempts to cause or causes the withholding or denial of the use of a computer, computer network, computer program, computer data or computer software to another user, or
- attempts to cause or causes another person to put false information into a computer.

**Source:** General Statutes § 53-451 (13) (applies to Internet Crimes).

## **VALUE (OF A SLUG)**

"Value" of a slug means the value of the coin, bill or token for which it is capable of being substituted.

**Source:** General Statutes § 53a-143 (3) (applies to §§ 53a-144 -- 53a-145, Unlawfully Using Slugs).

## **VEHICLE, see Motor Vehicle**

## **VISUAL DEPICTION**

"Visual depiction" includes undeveloped film and videotape and data, as defined in subdivision (8) of section 53a-250, that is capable of conversion into a visual image and includes encrypted data.

**Source:** General Statutes § 53a-193 (15) (applies to Part XX: Obscenity and Related Offenses, §§ 53a-194 -- 53a-210).

**Commentary:** General Statutes § 53a-250 (8) defines "data" as "information of any kind in any form, including computer software."

## **WIRETAPPING**

"Wiretapping" means the intentional overhearing or recording of a telephonic or telegraphic communication or a communication made by cellular radio telephone by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any

instrument, device or equipment. The normal operation of a telephone or telegraph corporation and the normal use of the services and facilities furnished by such corporation pursuant to its tariffs shall not be deemed wiretapping.

**Source:** General Statutes § 53a-187 (a) (1) (applies to § 53a-188, Tampering with Private Communications, and § 53a-189, Eavesdropping).

### **WITHOUT AUTHORITY**

A person is "without authority" when such person *<insert as appropriate:>*

- has no right or permission of the owner to use a computer or such person uses a computer in a manner exceeding such right or permission, or
- uses a computer, a computer network or the computer services of an electronic mail service provider to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider.

Transmission of electronic mail from an organization to its members shall not be deemed to be unsolicited bulk electronic mail.

**Source:** General Statutes § 53-451 (14) (applies to Internet Crimes).

### **WITNESS**

"Witness" is any person summoned, or who may be summoned, to give testimony in an official proceeding.

**Source:** General Statutes § 53a-146 (6) (applies to Part XI: Bribery, Offenses against the Administration of Justice and Other Related Offenses, §§ 53a-147 -- 53a-167d).

### **WRITTEN INSTRUMENT**

"Written instrument" means any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

**Source:** General Statutes § 53a-137 (1) (applies to Part X: Forgery and Related Offenses, §§ 53a-138 -- 53a-145).

# INDEX BY STATUTE

STATUTE	OFFENSE	INSTRUCTION
§ 14-215 (a) and (c)	Operation while Registration or License is Refused, Suspended or Revoked	8.3-3
§ 14-215 (c)	Operation without an Ignition Interlock Device	8.3-8
§ 14-222	Reckless Driving	8.3-7
§ 14-222a	Negligent Homicide with a Motor Vehicle	5.3-3
§ 14-224	Evading Responsibility	8.3-4
§ 14-227a	Driving Under the Influence	8.3-1
§ 14-227g	Driving Under the Influence, Under 21 Years Old	8.3-2
§ 21a-108 (1)	Obtaining Prescription Drugs by Fraud	8.1-13
§ 21a-108 (2)	Illegal Sale or Possession of Prescription Drugs	8.1-14
§ 21a-266 (a)	Obtaining a Controlled Substance by Fraud	8.1-11
§ 21a-267 (a)	Use of or Possession with Intent to Use Drug Paraphernalia	8.1-9
§ 21a-267 (b)	Drug Paraphernalia: Delivering	8.1-10
§ 21a-268	Misrepresenting Substance as Controlled	8.1-12
§ 21a-277 (a) and (b)	Sale or Possession with Intent to Sell a Controlled Substance	8.1-1
§ 21a-277 (c)	Possession of Drug Paraphernalia in a Drug Factory Situation	8.1-8
§ 21a-278 (a) and (b)	Sale or Possession with Intent to Sell a Controlled Substance by a Non-Drug-Dependent Person	8.1-2
§ 21a-278a (a)	Illegal Distribution of a Controlled Substance to a Minor	8.1-3
§ 21a-278a (b)	Illegal Distribution of a Controlled Substance near School, Public Housing, or Day Care Center	8.1-5
§ 21a-278a (c)	Employment of Minors in the Illegal Distribution of a Controlled Substance	8.1-6
§ 21a-279	Illegal Possession	8.1-7
§ 29-33 (a)	Improper Sale, Delivery or Transfer of Pistol or Revolver	8.2-1
§ 29-33 (b)	Purchasing a Pistol or Revolver without a Permit	8.2-2
§ 29-34 (a)	False Statement or Information in Connection with Sale or Transfer of a Pistol or Revolver	8.2-3

§ 29-34 (b)	Sale or Transfer of Pistol or Revolver to Person under 21 Years of Age	8.2-4
§ 29-35 (a)	Carrying a Pistol or Revolver without Permit	8.2-15
§ 29-36	Altering of Firearm Identification Mark	8.2-6
§ 29-37e	False statement or information in connection with sale or transfer of a firearm	8.2-3
§ 29-37j	Purchase of Firearm with Intent to Transfer it to Person Prohibited from Purchasing or Possessing	8.2-5
§ 29-38	Weapons in Vehicles	8.2-12
§ 38a-287	Defrauding Life or Accident Insurance Companies	10.6-1
§ 53-21 (a) (1)	Risk of Injury to a Minor (Situation Prong)	6.11-1
§ 53-21 (a) (1)	Risk of Injury to a Minor (Act Prong)	6.11-2
§ 53-21 (a) (2)	Risk of Injury to a Minor (Sexual Contact)	6.11-3
§ 53-21 (a) (3)	Sale or Buying of a Child	6.11-4
§ 53-23	Abandoning a Child under 6 Years of Age	6.11-5
§ 53-23a	Hazing	8.9-5
§ 53-80a	Manufacture of Bombs	8.2-31
§ 53-142a	Illegal Sale or Possession of Master Car Key	8.3-6
§ 53-164	Escape from Certain Institutions	8.9-2
§ 53-202	Machine Guns	8.2-14
§ 53-202b	Sale or Transfer of Assault Weapon	8.2-25
§ 53-202c	Possession of Assault Weapon	8.2-26
§ 53-202f	Transportation of Assault Weapon	8.2-27
§ 53-202j	Commission of a Class A, B, or C Felony with an Assault Weapon	2.11-5
§ 53-202k	Commission of a Class A, B, or C Felony with a Firearm	2.11-5
§ 53-202o	Affirmative Defense to Possession of Assault Weapon	8.2-28
§ 53-202aa	Firearms Trafficking	8.2-32
§ 53-203	Unlawful Discharge of Firearm	8.2-20
§ 53-205	Shotguns, Rifles and Muzzleloaders in Vehicles and Snowmobiles	8.2-13
§ 53-206	Carrying Dangerous Weapons	8.2-16
§ 53-206c (b)	Sale of a Facsimile Firearm	8.2-7
§ 53-206c (c)	Carrying or Brandishing Facsimile Firearm in a Threatening Manner	8.2-18
§ 53-206c (d)	Brandishing Facsimile Firearm in the Presence of an Officer	8.2-19
§ 53-206d (a)	Carrying a Firearm while Intoxicated	8.2-17
§ 53-206d (b)	Hunting while Intoxicated	8.2-24
§ 53-247	Cruelty to Animals	8.9-8

§ 53-341b	Sale or Delivery of Body Armor	8.2-30
§ 53-390	Extortionate Extension of Credit	10.2-18
§ 53-391	Advancing Money for Extortionate Extension of Credit	10.2-19
§ 53-392	Participation or Conspiracy in use of Extortionate Means	10.2-20
§ 53-395 (c)	Corrupt Organizations and Racketeering Activity (CORA)	8.8-1
§ 53-442	Health Insurance Fraud	10.6-2
§ 53-451 (b)	Unauthorized Use of a Computer or Computer Network	10.5-1
§ 53-451 (c)	Unlawful Sale or Distribution of Certain Software	10.5-2
§ 53a-7	Intoxication	2.7-1
§ 53a-8 (a)	Accessories and Accomplices	3.1-1
§ 53a-8 (b)	Vicarious Liability for Providing a Firearm	3.1-4
§ 53a-10 (a)	Renunciation of Criminal Purpose (Accessory)	3.1-2
§ 53a-13	Lack of Capacity	2.9-2
§ 53a-14	Duress	2.7-3
§ 53a-15	Entrapment	2.7-4
§ 53a-16a	Inoperability of Firearm	2.9-3
§ 53a-16b	Unarmed Coparticipant	2.9-4
§ 53a-19	Self-Defense and Defense of Others	2.8-1
§ 53a-19 (b)	Exceptions to Use of Deadly Physical Force: Duty to Retreat, Surrender Property, Comply with Demand	2.8-3
§ 53a-19 (c)	Exceptions to Justification: Provocation, Initial Aggressor, Combat by Agreement	2.8-2
§ 53a-20	Defense of Premises	2.8-4
§ 53a-21	Defense of Personal Property	2.8-5
§ 53a-22 (c)	Use of Physical Force by Peace Officer in Making Arrest or Preventing Escape	2.8-6
§ 53a-22 (d)	Use of Physical Force by Private Person at the Request of a Peace Officer in Making Arrest or Preventing Escape	2.8-7
§ 53a-22 (f)	Use of Physical Force by Private Person to Make an Arrest	2.8-8
§ 53a-23	Resisting Arrest by Physical Force	2.8-9
§ 53a-40	Persistent Offenders	2.12-1
§ 53a-40a	Persistent Offenders of Certain Crimes Involving Bigotry and Bias	2.12-1
§ 53a-40b	Commission of a Crime while on Release	2.12-3

§ 53a-40d	Persistent Offenders of Certain Crimes Involving Assault, Stalking, Trespassing, Threatening, Harassment, Criminal Violation of a Protective Order or Criminal Violation of a Restraining Order	2.12-1
§ 53a-40f	Persistent Operating while under the Influence Felony Offender	2.12-1
§ 53a-48 (a)	Conspiracy	3.3-1
§ 53a-48 (b)	Renunciation of Criminal Purpose (Conspiracy)	3.3-2
§ 53a-49 (a) (1)	Attempt	3.2-1
§ 53a-49 (a) (2)	Attempt	3.2-2
§ 53a-49 (c)	Renunciation of Criminal Purpose (Attempt)	3.2-3
§ 53a-54a (a)	Murder	5.1-1
§ 53a-54a (a)	Affirmative Defense of Extreme Emotional Disturbance	5.2-1
§ 53a-54b	Capital Felony or Murder with Special Circumstances	5.5-1
§ 53a-54c	Felony Murder	5.4-1
§ 53a-54c	Affirmative Defense to Felony Murder	5.4-2
§ 53a-54d	Arson Murder	5.4-3
§ 53a-55 (a) (1)	Manslaughter in the First Degree (Intentional)	5.1-2
§ 53a-55 (a) (2)	Manslaughter in the First Degree (Extreme Emotional Distress)	5.2-1
§ 53a-55 (a) (3)	Manslaughter in the First Degree (Reckless Indifference)	5.1-3
§ 53a-55a	Manslaughter in the First Degree with a Firearm	5.1-5
§ 53a-56 (a) (1)	Manslaughter in the Second Degree	5.1-4
§ 53a-56 (a) (2)	Manslaughter in the Second Degree (Aiding Suicide)	5.1-7
§ 53a-56a	Manslaughter in the Second Degree with a Firearm	5.1-5
§ 53a-56b	Manslaughter in the Second Degree with a Motor Vehicle	5.3-1
§ 53a-57	Misconduct with a Motor Vehicle	5.3-2
§ 53a-58	Criminally Negligent Homicide	5.1-6
§ 53a-59 (a) (1)	Assault in the First Degree (Deadly Weapon or Dangerous Instrument)	6.1-1
§ 53a-59 (a) (2)	Assault in the First Degree (Maiming)	6.1-2
§ 53a-59 (a) (3)	Assault in the First Degree (Reckless Indifference)	6.1-3
§ 53a-59 (a) (4)	Assault in the First Degree (Aided by Two or More Persons)	6.1-4

§ 53a-59 (a) (5)	Assault in the First Degree (Discharge of a Firearm)	6.1-5
§ 53a-59a	Assault of an Elderly, Blind, Disabled, Pregnant or Intellectually Disabled Person in the First Degree	6.1-16
§ 53a-59b	Assault of an Employee of the Department of Correction in the First Degree	6.1-17
§ 53a-59c	Assault of a Pregnant Woman Resulting in Termination of Pregnancy	6.1-18
§ 53a-60 (a) (1)	Assault in the Second Degree (Serious Physical Injury)	6.1-6
§ 53a-60 (a) (2)	Assault in the Second Degree (Intentional with a Deadly Weapon)	6.1-7
§ 53a-60 (a) (3)	Assault in the Second Degree (Reckless with a Deadly Weapon)	6.1-8
§ 53a-60 (a) (4)	Assault in the Second Degree (Administration of Stupefying Drugs)	6.1-9
§ 53a-60 (a) (5)	Assault in the Second Degree (Board of Parole Employee or Member)	6.1-10
§ 53a-60 (a) (6)	Assault in the Second Degree (Knockout)	6.1-19
§ 53a-60a	Assault in the Second Degree with a Firearm	6.1-11
§ 53a-60b	Assault of an Elderly, Blind, Disabled, Pregnant or Intellectually Disabled Person in the Second Degree	6.1-16
§ 53a-60c	Assault of an Elderly, Blind, Disabled, Pregnant or Intellectually Disabled Person in the Second Degree with a Firearm	6.1-16
§ 53a-60d	Assault in the Second Degree with a Motor Vehicle	6.1-12
§ 53a-61 (a) (1)	Assault in the Third Degree (Physical Injury)	6.1-13
§ 53a-61 (a) (2)	Assault in the Third Degree (Reckless)	6.1-14
§ 53a-61 (a) (3)	Assault in the Third Degree (Deadly Weapon)	6.1-15
§ 53a-61a	Assault of an Elderly, Blind, Disabled, Pregnant or Intellectually Disabled Person in the Third Degree	6.1-16
§ 53a-61aa (a) (1) (A) and (a) (2) (A)	Threatening in the First Degree (Intentional)	6.2-1
§ 53a-61aa (a) (1) (B) and (a) (2) (B)	Threatening in the First Degree (Reckless)	6.2-2
§ 53a-61aa (a) (3)	Threatening in the First Degree (With a Firearm)	6.2-4
§ 53a-62	Threatening in the Second Degree	6.2-3
§ 53a-63	Reckless Endangerment in the First Degree	6.3-1
§ 53a-64	Reckless Endangerment in the Second Degree	6.3-2
§ 53a-64aa	Strangulation in the First Degree	6.13-1

§ 53a-64bb	Strangulation in the Second Degree	6.13-2
§ 53a-64cc	Strangulation in the Third Degree	6.13-3
§ 53a-67	Affirmative Defense to Sexual Assault	7.1-13
§ 53a-70 (a) (1)	Sexual Assault in the First Degree	7.1-1
§ 53a-70 (a) (2)	Sexual Assault in the First Degree	7.1-2
§ 53a-70 (a) (3)	Sexual Assault in the First Degree	7.1-3
§ 53a-70 (a) (4)	Sexual Assault in the First Degree	7.1-4
§ 53a-70a	Aggravated Sexual Assault in the First Degree	7.1-5
§ 53a-70b	Sexual Assault in Spousal or Cohabiting Relationship	7.1-6
§ 53a-70c	Aggravated Sexual Assault of a Minor	7.1-14
§ 53a-71	Sexual Assault in the Second Degree	7.1-7
§ 53a-72a (a) (1)	Sexual Assault in the Third Degree	7.1-8
§ 53a-72a (a) (2)	Sexual Assault in the Third Degree	7.1-9
§ 53a-72b	Sexual Assault in the Third Degree with a Firearm	7.1-10
§ 53a-73a (a) (1) and (a) (3) through (9)	Sexual Assault in the Fourth Degree	7.1-11
§ 53a-73 (a) (2)	Sexual Assault in the Fourth Degree	7.1-12
§ 53a-82	Prostitution	7.3-1
§ 53a-83	Patronizing a Prostitute	7.3-2
§ 53a-83a	Patronizing a Prostitute from Motor Vehicle	7.3-3
§ 53a-86 (a) (1)	Promoting Prostitution in the First Degree (Coercion)	7.3-4
§ 53a-86 (a) (2)	Promoting Prostitution in the First Degree (By a Minor)	7.3-5
§ 53a-87	Promoting Prostitution in the Second Degree	7.3-6
§ 53a-88	Promoting Prostitution in the Third Degree	7.3-7
§ 53a-89	Permitting Prostitution	7.3-8
§ 53a-90a	Enticing a Minor	7.6-1
§ 53a-90b	Misrepresentation of Age to Entice a Minor	7.6-2
§ 53a-92 (a) (1)	Kidnapping in the First Degree (Ransom)	6.5-1
§ 53a-92 (a) (2)	Kidnapping in the First Degree	6.5-2
§ 53a-92a	Kidnapping with a Firearm	6.5-4
§ 53a-94	Kidnapping in the Second Degree	6.5-3
§ 53a-94a	Kidnapping with a Firearm	6.5-4
§ 53a-95	Unlawful Restraint in the First Degree	6.5-5
§ 53a-96	Unlawful Restraint in the Second Degree	6.5-6
§ 53a-97	Custodial Interference in the First Degree	6.6-1
§ 53a-98 (a) (1)	Custodial Interference in the Second Degree	6.6-2
§ 53a-98 (a) (2)	Custodial Interference in the Second Degree	6.6-3
§ 53a-98 (a) (3)	Custodial Interference in the Second Degree	6.6-4
§ 53a-99	Substitution of Children	6.11-6
§ 53a-100aa	Home Invasion	9.2-8

§ 53a-101 (a) (1) and (2)	Burglary in the First Degree	9.2-1
§ 53a-101 (a) (3)	Burglary in the First Degree	9.2-2
§ 53a-102	Burglary in the Second Degree	9.2-3
§ 53a-102a	Burglary with a Firearm in the Second Degree	9.2-5
§ 53a-103	Burglary in the Third Degree	9.2-4
§ 53a-103a	Burglary with a Firearm in the Third Degree	9.2-5
§ 53a-104	Affirmative Defense to Burglary	9.2-6
§ 53a-106	Manufacturing or Possession of Burglar's Tools	9.2-7
§ 53a-107 (a) (1) and (4)	Criminal Trespass in the First Degree	9.4-1
§ 53a-107 (a) (2) and (3)	Criminal Trespass in the First Degree	9.4-2
§ 53a-108	Criminal Trespass in the Second Degree	9.4-3
§ 53a-109	Criminal Trespass in the Third Degree	9.4-4
§ 53a-110	Affirmative Defenses to Criminal Trespass	9.4-5
§ 53a-111	Arson in the First Degree	9.3-1
§ 53a-112 (a) (1)	Arson in the Second Degree	9.3-2
§ 53a-112 (a) (2)	Arson in the Second Degree	9.3-3
§ 53a-113	Arson in the Third degree	9.3-4
§ 53a-114	Reckless Burning	9.3-5
§ 53a-115 (a) (1) and (5)	Criminal Mischief in the First Degree	9.5-1
§ 53a-115 (a) (2)	Criminal Mischief in the First Degree	9.5-2
§ 53a-115 (a) (3)	Criminal Mischief in the First Degree	9.5-3
§ 53a-115 (a) (4)	Criminal Mischief in the First Degree	9.5-4
§ 53a-116 (a) (1) and (3)	Criminal Mischief in the Second Degree	9.5-5
§ 53a-116 (a) (2)	Criminal Mischief in the Second Degree	9.5-6
§ 53a-117 (a) (1)	Criminal Mischief in the Third Degree	9.5-7
§ 53a-117 (a) (2)	Criminal Mischief in the Third Degree	9.5-8
§ 53a-117a (a) (1)	Criminal Mischief in the Fourth Degree	9.5-9
§ 53a-117a (a) (2)	Criminal Mischief in the Fourth Degree	9.5-10
§ 53a-117e	Criminal Damage of Landlord's Property in the First Degree	9.5-11
§ 53a-117f	Criminal Damage of Landlord's Property in the Second Degree	9.5-11
§ 53a-117g	Criminal Damage of Landlord's Property in the Third Degree	9.5-11
§ 53a-119	Larceny	9.1-1
§ 53a-119 (1)	Larceny by Embezzlement	9.1-6
§ 53a-119 (2)	Larceny by Obtaining Property by False Pretenses	9.1-7

§ 53a-119 (3)	Larceny by Obtaining Property by False Promise	9.1-8
§ 53a-119 (4)	Larceny by Acquiring Property Lost, Mislaid or Delivered by Mistake	9.1-10
§ 53a-119 (5)	Larceny by Extortion	9.1-11
§ 53a-119 (6) (A) and (B)	Larceny by Defrauding Public Community	9.1-12
§ 53a-119 (6) (C)	Larceny by Defrauding Public Community	9.1-13
§ 53a-119 (7)	Larceny by Theft of Services	9.1-14
§ 53a-119 (8)	Larceny by Receiving Stolen Property	9.1-15
§ 53a-119 (9)	Larceny by Shoplifting	9.1-16
§ 53a-119 (10)	Larceny by Conversion of a Motor Vehicle	9.1-18
§ 53a-119 (11)	Larceny by Obtaining Property Through Fraudulent Use of an Automated Teller Machine	9.1-19
§ 53a-119 (12)	Larceny by Library Theft	9.1-20
§ 53a-119 (13)	Larceny by Conversion of Leased Personal Property	9.1-21
§ 53a-119 (14)	Larceny by Failure to Pay Prevailing Rate of Wages	9.1-22
§ 53a-119 (15)	Larceny by Theft of Utility Service	9.1-23
§ 53a-119b (a) and (b)	Using Motor Vehicle or Vessel without the Owner's Permission	9.1-28
§ 53a-119b (c) (1)	Interfering or Tampering with a Motor Vehicle	9.1-29
§ 53a-119b (c) (2)	Interfering or Tampering with a Motor Vehicle	9.1-30
§ 53a-122	Larceny in the First Degree	See Larceny
§ 53a-122 (a) (3)	Larceny of a Motor Vehicle in the First Degree	9.1-4
§ 53a-123 (a) (1)	Larceny of a Motor Vehicle in the Second Degree	9.1-4
§ 53a-123 (a) (2)	Larceny in the Second Degree	See Larceny
§ 53a-123 (a) (3)	Larceny from the Person in the Second Degree	9.1-5
§ 53a-123 (a) (4)	Larceny by Defrauding Public Community	9.1-12
§ 53a-123 (a) (5)	Larceny of an Elderly, Blind, or Physically Disabled Person in the Second Degree	9.1-9
§ 53a-124	Larceny in the Third Degree	See Larceny
§ 53a-124 (a) (1)	Larceny of a Motor Vehicle in the Third Degree	9.1-4
§ 53a-124 (a) (3)	Larceny of a Public Record	9.1-2
§ 53a-124 (a) (4)	Larceny of a Secret Scientific or Technical Process, Invention or Formula	9.1-3
§ 53a-125	Larceny in the Fourth Degree	See Larceny
§ 53a-125a	Larceny in the Fifth Degree	See Larceny
§ 53a-125b	Larceny in the Sixth Degree	See Larceny

§ 53a-126a	<b>Criminal Trover in the First Degree</b>	<b>9.5-12</b>
§ 53a-126b	<b>Criminal Trover in the Second Degree</b>	<b>9.5-13</b>
§ 53a-127b	<b>Fraudulent Use of an Automated Teller Machine</b>	<b>9.1-24</b>
§ 53a-127c (a) (1)	<b>Theft of Utility Service</b>	<b>9.1-25</b>
§ 53a-127c (a) (2)	<b>Theft of Utility Service</b>	<b>9.1-26</b>
§ 53a-127c (a) (3)	<b>Theft of Utility Service</b>	<b>9.1-27</b>
§ 53a-127f	<b>Possession of a Shoplifting Device</b>	<b>9.1-17</b>
§ 53a-128	<b>Issuing or Passing a Bad Check</b>	<b>10.2-1</b>
§ 53a-128b	<b>False Statement to Procure Issuance of a Credit Card</b>	<b>10.2-2</b>
§ 53a-128c (a)	<b>Credit Card Theft</b>	<b>10.2-3</b>
§ 53a-128c (b)	<b>Credit Card Theft</b>	<b>10.2-4</b>
§ 53a-128c (c)	<b>Illegal Transfer of a Credit Card</b>	<b>10.2-5</b>
§ 53a-128c (d)	<b>Obtaining a Credit Card by Fraud</b>	<b>10.2-6</b>
§ 53a-128c (e)	<b>Receiving Illegally Obtained Credit Cards</b>	<b>10.2-7</b>
§ 53a-128c (f)	<b>Credit Card Forgery</b>	<b>10.2-8</b>
§ 53a-128c (g)	<b>Credit Card Forgery</b>	<b>10.2-9</b>
§ 53a-128d (1)	<b>Illegal Use of a Credit Card</b>	<b>10.2-10</b>
§ 53a-128d (2)	<b>Illegal Use of a Credit Card</b>	<b>10.2-11</b>
§ 53a-128d (3)	<b>Illegal Use of a Credit Card</b>	<b>10.2-12</b>
§ 53a-128e (a)	<b>Illegal Furnishing of Money, Goods or Services on a Credit Card</b>	<b>10.2-13</b>
§ 53a-128e (b)	<b>Illegal Furnishing of Money, Goods or Services on a Credit Card</b>	<b>10.2-14</b>
§ 53a-128f	<b>Unlawful Completion of a Credit Card</b>	<b>10.2-15</b>
§ 53a-128f	<b>Unlawful Possession of Items Used in the Production of Credit Cards</b>	<b>10.2-16</b>
§ 53a-128g	<b>Receipt of Money, Goods or Services Obtained by Illegal Use of a Credit Card</b>	<b>10.2-17</b>
§ 53a-129b	<b>Identity Theft in the First Degree</b>	<b>10.3-1</b>
§ 53a-129c	<b>Identity Theft in the Second Degree</b>	<b>10.3-1</b>
§ 53a-129d	<b>Identity Theft in the Third Degree</b>	<b>10.3-1</b>
§ 53a-129e	<b>Trafficking in Identifying Information</b>	<b>10.3-2</b>
§ 53a-130 (a) (1) and (3)	<b>Criminal Impersonation</b>	<b>10.7-1</b>
§ 53a-130 (a) (4)	<b>Criminal Impersonation</b>	<b>10.7-2</b>
§ 53a-130 (a) (5)	<b>Criminal Impersonation (by Electronic Device)</b>	<b>10.7-4</b>
§ 53a-130 (a) (2)	<b>Criminal Impersonation (State Marshal)</b>	<b>10.7-5</b>
§ 53a-130a	<b>Impersonation of a Police Officer</b>	<b>10.7-3</b>
§ 53a-131	<b>Unlawfully Concealing a Will</b>	<b>10.9-3</b>
§ 53a-134	<b>Robbery in the First Degree</b>	<b>6.4-1</b>
§ 53a-135 (a) (1)	<b>Robbery in the Second Degree</b>	<b>6.4-2</b>

§ 53a-135 (a) (2)	Robbery in the Second Degree (in a Bank or Credit Union)	6.4-5
§ 53a-136	Robbery in the Third Degree	6.4-3
§ 53a-136a	Carjacking	6.4-4
§ 53a-138	Forgery in the First Degree	10.1-1
§ 53a-139	Forgery in the Second Degree	10.1-2
§ 53a-140	Forgery in the Third Degree	10.1-3
§ 53a-141 (a) (1)	Criminal Simulation	10.1-4
§ 53a-141 (a) (2)	Criminal Simulation	10.1-5
§ 53a-142	Forgery of Symbols	10.1-6
§ 53a-144	Unlawfully Using Slugs in the First Degree	10.9-1
§ 53a-145 (a) (1)	Unlawfully Using Slugs in the Second Degree	10.9-2
§ 53a-145 (a) (2)	Unlawfully Using Slugs in the Second Degree	10.9-1
§ 53a-147	Bribery	4.1-1
§ 53a-148	Bribe Receiving	4.1-2
§ 53a-149	Bribery of a Witness	4.5-1
§ 53a-150	Bribe Receiving by a Witness	4.5-2
§ 53a-151	Tampering with a Witness	4.5-3
§ 53a-151a	Intimidating a Witness	4.5-4
§ 53a-152	Bribery of a Juror	4.5-5
§ 53a-153	Bribe Receiving by a Juror	4.5-6
§ 53a-154	Tampering with a Juror	4.5-7
§ 53a-155	Tampering with or Fabricating Physical Evidence	4.5-8
§ 53a-156	Perjury	4.5-9
§ 53a-157a	False Statement on a Certified Payroll	4.2-1
§ 53a-157b	False Statement	4.2-2
§ 53a-158	Bribery of a Labor Official	4.1-3
§ 53a-159	Bribe Receiving by a Labor Official	4.1-4
§ 53a-160	Commercial Bribery	4.1-5
§ 53a-161	Receiving a Commercial Bribe	4.1-6
§ 53a-161a	Bid Rigging	4.1-7
§ 53a-161b	Disclosure of Bid or Proposal	4.1-8
§ 53a-161c (a) (1)	Receiving Kickbacks	4.1-9
§ 53a-161c (a) (2)	Receiving Kickbacks	4.1-10
§ 53a-161c (a) (3)	Receiving Kickbacks	4.1-11
§ 53a-161d (a) (1)	Paying a Kickback	4.1-12
§ 53a-161d (a) (2)	Paying a Kickback	4.1-13
§ 53a-165aa	Hindering Prosecution in the First Degree	4.5-10
§ 53a-166	Hindering Prosecution in the Second Degree	4.5-11
§ 53a-167	Hindering Prosecution in the Third Degree	4.5-11
§ 53a-167a	Interfering with an Officer	4.3-1
§ 53a-167b	Failure to Assist a Peace Officer, Special Policeman or Firefighter	4.3-2

§ 53a-167c	Assault of Public Safety or Emergency Medical Personnel	4.3-3
§ 53a-167d	Assault of a Prosecutor	4.3-4
§ 53a-169	Escape in the First Degree	4.6-5
§ 53a-170	Escape in the Second Degree	4.6-6
§ 53a-171 (a) (1)	Escape from Custody	4.6-7
§ 53a-171 (a) (2)	Escape from Custody	4.6-8
§ 53a-171a	Aiding Escape of Mentally Ill or Drug Dependent Person	8.9-3
§ 53a-172 (a) (1)	Failure to Appear in the First Degree (While Released on Bail or a Promise to Appear)	4.4-1
§ 53a-172 (a) (2)	Failure to Appear in the First Degree (While on Probation)	4.4-2
§ 53a-173 (a) (1)	Failure to Appear in the Second Degree (While Released on Bail or a Promise to Appear)	4.4-1
§ 53a-173 (a) (2)	Failure to Appear in the Second Degree (While on Probation)	4.4-2
§ 53a-174 (a)	Unauthorized Conveyance of Items into Correctional or Humane Institution or to Inmate	4.6-1
§ 53a-174a	Possession of Weapon or Dangerous Instrument in Correctional Institution	4.6-2
§ 53a-175	Riot in the First Degree	8.6-1
§ 53a-176	Riot in the Second Degree	8.6-2
§ 53a-177	Unlawful Assembly	8.6-3
§ 53a-178	Inciting to Riot	8.6-4
§ 53a-179	Criminal Advocacy	8.6-5
§ 53a-179a	Inciting Injury to Persons or Property	8.6-6
§ 53a-179b	Rioting at Correctional Institution	4.6-3
§ 53a-179c	Inciting to Riot at Correctional Institution	4.6-4
§ 53a-180 (a) (1)	Falsely Reporting an Incident in the First Degree	8.5-1
§ 53a-180 (a) (2)	Falsely Reporting an Incident in the First Degree	8.5-2
§ 53a-180a	Falsely Reporting an Incident Resulting in Serious Physical Injury or Death	8.5-3
§ 53a-180b	Falsely Reporting an Incident Concerning Serious Physical Injury or Death	8.5-4
§ 53a-180c	Falsely Reporting an Incident in the Second Degree	8.5-5
§ 53a-180aa	Breach of the Peace in the First Degree	8.4-1
§ 53a-181 (a) (1)	Breach of the Peace in the Second Degree	8.4-2
§ 53a-181 (a) (2)	Breach of the Peace in the Second Degree	8.4-3
§ 53a-181 (a) (3)	Breach of the Peace in the Second Degree	8.4-4
§ 53a-181 (a) (4)	Breach of the Peace in the Second Degree	8.4-5

§ 53a-181 (a) (5)	Breach of the Peace in the Second Degree	8.4-6
§ 53a-181 (a) (6)	Breach of the Peace in the Second Degree	8.4-7
§ 53a-181c	Stalking in the First Degree	6.7-1
§ 53a-181d (b) (1)	Stalking in the Second Degree	6.7-2
§ 53a-181e	Stalking in the Third Degree	6.7-3
§ 53a-181j	Intimidation Based on Bigotry or Bias in the First Degree	6.10-1
§ 53a-181k	Intimidation Based on Bigotry or Bias in the Second Degree	6.10-2
§ 53a-181l	Intimidation Based on Bigotry or Bias in the Third Degree	6.10-3
§ 53a-182	Disorderly Conduct	8.4-8
§ 53a-182a	Obstructing Free Passage	8.4-9
§ 53a-182b	Harassment in the First Degree	6.7-4
§ 53a-183 (a) (1)	Harassment in the Second Degree (Obscenity)	6.7-5
§ 53a-183 (a) (2)	Harassment in the Second Degree (Written Communication)	6.7-6
§ 53a-183 (a) (3)	Harassment in the Second Degree (Telephone)	6.7-7
§ 53a-183b	Interfering with Emergency Call	8.9-1
§ 53a-185	Loitering on School Grounds	8.9-4
§ 53a-186	Public Indecency	7.5-2
§ 53a-188 (a) (1)	Tampering with Private Communications	10.8-1
§ 53a-188 (a) (2)	Tampering with Private Communications	10.8-2
§ 53a-189	Illegal Wiretapping	10.8-3
§ 53a-189	Eavesdropping	10.8-4
§ 53a-189a	Voyeurism	7.5-1
§ 53a-192	Coercion	6.12-1
§ 53a-192a	Trafficking in Persons	6.12-2
§ 53a-194	Obscenity	7.4-1
§ 53a-195	Defense to Obscenity	7.4-2
§ 53a-196	Obscenity as to Minors	7.4-3
§ 53a-196 (c)	Affirmative Defense to Obscenity as to Minors	7.4-4
§ 53a-196a	Employing a Minor in an Obscene Performance	7.7-1
§ 53a-196b	Promoting a Minor in an Obscene Performance	7.7-2
§ 53a-196c	Importing Child Pornography	7.7-3
§ 53a-196d	Possessing Child Pornography in the First Degree	7.7-4
§ 53a-196e	Possessing Child Pornography in the Second Degree	7.7-4
§ 53a-196f	Possessing Child Pornography in the Third Degree	7.7-4
§ 53a-196g	Affirmative Defenses to Child Pornography	7.7-5

	<b>Possession</b>	
§ 53a-196h	<b>Possessing or Transmitting Child Pornography by a Minor</b>	<b>7.7-6</b>
§ 53a-211	<b>Possession of a Sawed-Off Shotgun or Silencer</b>	<b>8.2-11</b>
§ 53a-212	<b>Stealing a Firearm</b>	<b>8.2-21</b>
§ 53a-213	<b>Drinking while Operating Motor Vehicle</b>	<b>8.3-5</b>
§ 53a-215	<b>Insurance Fraud</b>	<b>10.6-3</b>
§ 53a-216	<b>Criminal Use of Firearm or Electronic Defense Weapon</b>	<b>8.2-22</b>
§ 53a-217	<b>Criminal Possession of a Firearm or Electronic Defense Weapon</b>	<b>8.2-8</b>
§ 53a-217a	<b>Criminally Negligent Storage of a Firearm</b>	<b>8.2-23</b>
§ 53a-217b	<b>Possession of a Weapon on School Grounds</b>	<b>8.2-10</b>
§ 53a-217c	<b>Criminal Possession of a Pistol or Revolver</b>	<b>8.2-9</b>
§ 53a-217d	<b>Criminal Possession of Body Armor</b>	<b>8.2-29</b>
§ 53a-222	<b>Violating Conditions of Release in the First Degree</b>	<b>4.7-1</b>
§ 53a-222a	<b>Violating Conditions of Release in the Second Degree</b>	<b>4.7-1</b>
§ 53a-223	<b>Criminal Violation of a Protective Order</b>	<b>6.8-1</b>
§ 53a-223a	<b>Criminal Violation of a Standing Criminal Restraining Order</b>	<b>6.8-2</b>
§ 53a-223b	<b>Criminal Violation of a Restraining Order</b>	<b>6.8-3</b>
§ 53a-251 (b)	<b>Unauthorized Access to a Computer System</b>	<b>9.6-1</b>
§ 53a-251 (c)	<b>Theft of Computer Services</b>	<b>9.6-2</b>
§ 53a-251 (d)	<b>Interruption of Computer Services</b>	<b>9.6-3</b>
§ 53a-251 (e) (1)	<b>Misuse of Computer System Information</b>	<b>9.6-4</b>
§ 53a-251 (e) (2)	<b>Misuse of Computer System Information</b>	<b>9.6-5</b>
§ 53a-251 (e) (3) and (4)	<b>Misuse of Computer System Information</b>	<b>9.6-6</b>
§ 53a-251 (f)	<b>Destruction of Computer Equipment</b>	<b>9.6-7</b>
§ 53a-252	<b>Computer Crime in the First Degree</b>	<b>See Computer Crimes</b>
§ 53a-253	<b>Computer Crime in the Second Degree</b>	<b>See Computer Crimes</b>
§ 53a-254	<b>Computer Crime in the Third Degree</b>	<b>See Computer Crimes</b>
§ 53a-255	<b>Computer Crime in the Fourth Degree</b>	<b>See Computer Crimes</b>
§ 53a-256	<b>Computer Crime in the Fifth Degree</b>	<b>See Computer Crimes</b>
§ 53a-276	<b>Money Laundering in the First Degree</b>	<b>10.4-1</b>
§ 53a-277	<b>Money Laundering in the Second Degree</b>	<b>10.4-2</b>
§ 53a-278	<b>Money Laundering in the Third Degree</b>	<b>10.4-3</b>
§ 53a-279	<b>Money Laundering in the Fourth Degree</b>	<b>10.4-4</b>

<b>§ 53a-291</b>	<b>Vendor Fraud in the First Degree</b>	<b>4.1-14</b>
<b>§ 53a-292</b>	<b>Vendor Fraud in the Second Degree</b>	<b>4.1-14</b>
<b>§ 53a-293</b>	<b>Vendor Fraud in the Third Degree</b>	<b>4.1-14</b>
<b>§ 53a-294</b>	<b>Vendor Fraud in the Fourth Degree</b>	<b>4.1-14</b>
<b>§ 53a-295</b>	<b>Vendor Fraud in the Fifth Degree</b>	<b>4.1-14</b>
<b>§ 53a-296</b>	<b>Vendor Fraud in the Sixth Degree</b>	<b>4.1-14</b>
<b>§ 53a-300</b>	<b>Act of Terrorism</b>	<b>8.7-1</b>
<b>§ 53a-301</b>	<b>Computer Crime for Terrorist Purposes</b>	<b>8.7-2</b>
<b>§ 53a-321</b>	<b>Abuse of Elderly, Blind, Disabled or Intellectually Disabled Person in the First Degree</b>	<b>6.9-1</b>
<b>§ 53a-322</b>	<b>Abuse of Elderly, Blind, Disabled or Intellectually Disabled Person in the Second Degree</b>	<b>6.9-1</b>
<b>§ 53a-323</b>	<b>Abuse of Elderly, Blind, Disabled or Intellectually Disabled Person in the Third Degree</b>	<b>6.9-1</b>
<b>§ 54-33d</b>	<b>Interference with a Search</b>	<b>4.3-5</b>
<b>§ 54-102g</b>	<b>Noncompliance with DNA Sampling</b>	<b>8.9-6</b>
<b>§ 54-102a (c)</b>	<b>Noncompliance with Venereal Disease or HIV Exam</b>	<b>8.9-7</b>
<b>§ 54-251 (e)</b>	<b>Failure to Register as a Sex Offender</b>	<b>7.8-1</b>
<b>§ 54-252 (d)</b>	<b>Failure to Register as a Sex Offender</b>	<b>7.8-1</b>
<b>§ 54-253 (e)</b>	<b>Failure to Register as a Sex Offender</b>	<b>7.8-1</b>
<b>§ 54-254 (b)</b>	<b>Failure to Register as a Sex Offender</b>	<b>7.8-1</b>

# ARCHIVED INSTRUCTIONS

When a statutory amendment is made that changes the definition of an offense, the current instruction will be updated to reflect the most current statute. The old instruction will be moved to this archive so that it may be used when a defendant is charged under an earlier version of the statute.

## 4.2-1A False Statement in the First Degree -- § 53a-157a

**Note: This instruction is for crimes committed before October 1, 2013.**

The defendant is charged [in count \_\_\_\_] with false statement in the first degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of false statement in the first degree when (he/she) intentionally makes a false written statement on a certified payroll for a public works project which (he/she) does not believe to be true and which statement is intended to mislead a contracting authority or the labor commissioner in the exercise of (his/her) authority or the fulfillment of (his/her) duties.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Contract for public works project**

The first element is that a contract existed between *<insert name of contractor>* and *<insert name of agency or political subdivision>* for *<insert specific nature of contract>*.

### **Element 2 - False statement**

The second element is that the defendant intentionally made a false written statement on a certified payroll.

### **Element 3 - Known to be false**

The third element is that the defendant did not believe the statement to be true.

### **Element 4 - Intent to mislead**

The final element is that the defendant made the statement with the specific intent to mislead a contracting authority or the labor commissioner in the exercise of (his/her) authority or the fulfillment of (his/her) duties. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) there was a contract between *<insert name of contractor>* and *<insert name of agency or political subdivision>* for *<insert specific nature of contract>*, 2) the defendant intentionally made a false written statement on a certified payroll, 3) the defendant did not believe the statement was true, and 4) the defendant made the statement with the specific intent to mislead a contracting authority or the labor commissioner in the exercise of (his/her) authority or the fulfillment of (his/her) duties.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of false statement in the first degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 4.2-2A False Statement in the Second Degree -- § 53a-157b

**Note: This instruction is for crimes committed before October 1, 2013.**

The defendant is charged [in count \_\_\_\_] with false statement in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of false statement in the second degree when (he/she) intentionally makes a false written statement under oath or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable, which (he/she) does not believe to be true and which statement is intended to mislead a public servant in the performance of (his/her) official function.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Statement**

The first element is that the defendant made a written statement (under oath / pursuant to a form bearing notice). *<Insert the applicable definitions:>*

- A written statement is made under oath when the person making the statement makes a solemn declaration, before a person authorized by law to administer oaths, that the assertions contained in the written statement are true.
- A "form bearing notice" is a form that states on its face that any false statements made on the form are punishable and that such notice was authorized by law.

### **Element 2 - Intentionally made**

The second element is that the defendant intentionally made the written statement. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Element 3 - Known to be untrue**

The third element is that the defendant did not, at the time that (he/she) made the statement, believe the statement to be true.

### **Element 4 - Intent to mislead**

The fourth element is that the statement was specifically intended to mislead a public servant in the performance of (his/her) official function. A "public servant" is an officer or employee of the government or a quasi-public agency, elected or appointed, and any person participating as adviser, consultant or otherwise, paid or unpaid, in performing a governmental function. It is immaterial whether the public servant was in fact misled. It is sufficient if it is established that the statement was intended to mislead the public servant in the performance of (his/her) official function.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant made a written statement (under oath / pursuant to a form bearing notice), 2) the defendant made the statement

intentionally, 3) the defendant knew the statement was not true, and 4) the defendant made the false statement with the specific intent to mislead a public servant in the performance of (his/her) official function.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of false statement in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.7-2A Stalking in the Second Degree -- § 53a-181d

**Note:** This instruction is for crimes committed before October 1, 2012.

The defendant is charged [in count \_\_\_] with stalking in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of stalking in the second degree when, with intent to cause another person to fear for (his/her) physical safety, (he/she) wilfully and repeatedly follows or lies in wait for such other person and causes such other person to reasonably fear for (his/her) physical safety.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Intent**

The first element is that the defendant specifically intended to cause <insert name of person> to fear for (his/her) physical safety. "Fear for (his/her) physical safety" means that (he/she) feared that bodily harm could come to (him/her). A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See Intent: Specific, Instruction 2.3-1.>

### **Element 2 - Followed or lay in wait**

The second element is that the defendant (followed / lay in wait for) <insert name of person>. <Insert as appropriate:>

- The following must have a predatory feel to it. The statute does not encompass following that is aimless, unintentional, accidental or undertaken for a lawful purpose. Following implies proximity in space as well as time. Whether someone has deliberately maintained sufficient visual or physical proximity with another person, uninterrupted, over a substantial enough period of time to constitute "following" will depend upon a variety of differing factors in each case.
- In the context of stalking, "lying in wait" means waiting in a place where another person is likely to be or to pass by.

### **Element 3 - Wilfulness**

The third element is that the defendant acted wilfully. To act "wilfully" means to act intentionally or deliberately.

### **Element 4 - Repeatedly**

The fourth element is that the defendant acted repeatedly. Acting "repeatedly" means acting on more than one occasion. An isolated act of following or lying in wait cannot constitute stalking.

### **Element 5 - Caused fear**

The fifth element is that the defendant caused <insert name of person> to reasonably fear for (his/her) physical safety. Determining whether this element is satisfied requires a two step process. First, the situation and the facts must be viewed from the viewpoint of <insert name of person>. Did (he/she) in fact fear for (his/her) physical safety? If the answer to that question is

no, you must find the defendant not guilty. If the answer to that question is yes, you must then ask whether that fear was reasonable. You must answer that question from the viewpoint of a reasonable person under the circumstances at the time. You must ask yourself whether under all the circumstances then present, was the fear reasonable?

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant intended to cause <insert name of person> to fear for (his/her) safety, 2) the defendant followed or lay in wait for <insert name of person>, 3) the defendant acted wilfully, 4) the defendant acted repeatedly, and 5) the defendant caused <insert name of person> to reasonably fear for (his/her) physical safety.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of stalking in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 6.12-2A Trafficking in Persons -- § 53a-192a

**Note:** This instruction is for crimes committed before October 1, 2013.

The defendant is charged [in count \_\_\_] with trafficking in persons. The statute defining this offense reads in pertinent part:

A person is guilty of trafficking in persons when such person commits coercion and the other person is compelled or induced to (1) engage in conduct that constitutes prostitution, or (2) provide labor or services.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Intent to compel or induce**

The defendant must have specifically intended to compel or induce the other person to engage in specific conduct. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

### **Element 2 - Compelled or induced**

The second element is that the defendant compelled or induced another person to (engage in conduct that constitutes prostitution / provide labor or services). "Compel" means to force or constrain to do something. "Induce" means to move to action by persuasion or by influence. <Insert specific allegations.>

### **Element 3 - By means of fear**

The third element is that the defendant did this by instilling in <insert name of complainant> a fear that, if the demand was not complied with, then the defendant or another person would <insert as appropriate:>

- commit a criminal offense.
- accuse a person of a criminal offense.
- expose a secret tending to subject a person to hatred, contempt or ridicule, or to impair a person's credit or business repute.
- take or withhold action as an official, or cause an official to take or withhold action.

<Insert specific allegations.>

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant specifically intended to compel or induce <insert name of complainant> to engage in certain conduct, 2) the defendant compelled or induced <insert name of complainant> to engage in conduct that constitutes prostitution / provide labor or services), and 3) did so by instilling fear in <insert name of complainant> that <insert specific allegations>.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of trafficking in persons, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 7.1-7A Sexual Assault in the Second Degree -- § 53a-71

**Note:** This instruction is for crimes committed before October 1, 2007.

The defendant is charged [in count \_\_\_] with sexual assault in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and *<insert appropriate subsection:>*

- § 53a-71 (a) (1): such other person is thirteen years of age or older but under sixteen years of age and the actor is more than two years older than such person.
- § 53a-71 (a) (2): such other person is mentally defective to the extent that such person is unable to consent to such sexual intercourse.
- § 53a-71 (a) (3): such other person is physically helpless.
- § 53a-71 (a) (4): such other person is less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare.
- § 53a-71 (a) (5): such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such person.
- § 53a-71 (a) (6): the actor is a psychotherapist and such other person is (a patient of the actor and the sexual intercourse occurs during the psychotherapy session / a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor / a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception).
- § 53a-71 (a) (7): the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional.
- § 53a-71 (a) (8): the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor.
- § 53a-71 (a) (9): the actor is a coach in an athletic activity or a person who provides intensive, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and is (a secondary school student and receives such coaching or instruction in a secondary school setting / under eighteen years of age).
- § 53a-71 (a) (10): the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and such other person is under eighteen years of age.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### **Element 1 - Sexual intercourse**

The first element is that the defendant and the complainant engaged in sexual intercourse. "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Its meaning is limited to persons not married to each other.

Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse, or fellatio and does not require emission of semen. Penetration, however, is not required for the commission of cunnilingus. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.

### **Element 2 - Additional factor**

The second element is that, at the time of the offense, *<insert as appropriate and tailor to the facts of the case:>*

- **§ 53a-71 (a) (1):** the complainant was thirteen years of age or older but under sixteen years of age and the defendant was more than two years older than the complainant at the time this offense was committed.
- **§ 53a-71 (a) (2):** the complainant was mentally defective to the extent that (he/she) was unable to consent to such sexual intercourse. "Mentally defective" means that a person suffers from a mental disease or defect that renders such person incapable of appraising the nature of such person's conduct. The person's condition must not have been a temporary condition, but a standing disease or defect of mind. It is sufficient if the condition made (him/her) unable to understand the defendant's conduct.
- **§ 53a-71 (a) (3):** the complainant was physically helpless. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate the unwillingness to an act. That is, the complainant was unable by reason of (his/her) physical condition to do anything and was, therefore, incapable of consenting. The helplessness referred to is separate and apart from any mental condition.
- **§ 53a-71 (a) (4):** the complainant was less than eighteen years old, and the defendant was (the complainant's guardian / responsible for the general supervision of the complainant's welfare).
- **§ 53a-71 (a) (5):** the complainant was in custody of law or detained in a hospital or other institution and the defendant had supervisory or disciplinary authority over (him/her).
- **§ 53a-71 (a) (6):** the defendant was a psychotherapist and the complainant was *<insert as appropriate:>*
  - a patient of the defendant and the sexual intercourse occurred during the psychotherapy session.
  - a patient or former patient of the defendant and (he/she) was emotionally dependent upon the defendant.
  - a patient or former patient of the defendant and the sexual intercourse occurred by means of therapeutic deception.

*<Include appropriate definitions:>*

- "Psychotherapist" means a physician, psychologist, nurse, substance abuse counselor, social worker, clergyman, marital and family therapist, mental health service provider, hypnotist or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.
- "Psychotherapy" means the professional treatment, assessment or counseling of a mental or emotional illness, symptom or condition.
- "Emotionally dependent" means that the nature of the patient or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the patient or

former patient is unable to withhold consent to sexual intercourse with the psychotherapist.

- "Therapeutic deception" means a representation by a psychotherapist that sexual intercourse with the psychotherapist is consistent with or part of the patient's treatment.
- **§ 53a-71 (a) (7):** the defendant accomplished the sexual intercourse by means of a false representation that the sexual intercourse was for a bona fide medical purpose by a health care professional.
- **§ 53a-71 (a) (8):** the defendant was a school employee and the complainant was a student enrolled in a school in which the defendant worked or a school under the jurisdiction of the local or regional board of education which employed the defendant. "School employee" means a teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or a private elementary or secondary school or working in a public or private elementary or secondary school.
- **§ 53a-71 (a) (9):** the defendant (was a coach in an athletic activity / provided intensive, ongoing instruction) and the complainant was a recipient of the (coaching / instruction) from the defendant, and the complainant was (a secondary school student and received the (coaching / instruction) in a secondary school setting / under eighteen years of age).
- **§ 53a-71 (a) (10):** the defendant was twenty years of age or older and stood in a position of power, authority or supervision over the complainant by virtue of the defendant's professional, legal, occupational or volunteer status and the complainant's participation in a program or activity, and the complainant was under eighteen years of age.

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) sexual intercourse took place between the defendant and the complainant and 2) *<insert additional factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 7.1-7B Sexual Assault in the Second Degree -- § 53a-71

**Note:** This instruction is for crimes committed on or after October 1, 2007 and before October 1, 2013. For the instruction for crimes committed before October 1, 2007, see Instruction 7.1-7A in the Archive.

The defendant is charged [in count \_\_\_] with sexual assault in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and *<insert appropriate subsection:>*

- § 53a-71 (a) (1): such other person is thirteen years of age or older but under sixteen years of age and the actor is more than three years older than such person.
- § 53a-71 (a) (2): such other person is mentally defective to the extent that such person is unable to consent to such sexual intercourse.
- § 53a-71 (a) (3): such other person is physically helpless.
- § 53a-71 (a) (4): such other person is less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare.
- § 53a-71 (a) (5): such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such person.
- § 53a-71 (a) (6): the actor is a psychotherapist and such other person is (a patient of the actor and the sexual intercourse occurs during the psychotherapy session / a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor / a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception).
- § 53a-71 (a) (7): the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional.
- § 53a-71 (a) (8): the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor.
- § 53a-71 (a) (9): the actor is a coach in an athletic activity or a person who provides intensive, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and is (a secondary school student and receives such coaching or instruction in a secondary school setting / under eighteen years of age).
- § 53a-71 (a) (10): the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and such other person is under eighteen years of age.
- § 53a-71 (a) (11): such other person is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### **Element 1 - Sexual intercourse**

The first element is that the defendant and the complainant engaged in sexual intercourse.

"Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Its meaning is limited to persons not married to each other.

Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse, or fellatio and does not require emission of semen. Penetration, however, is not required for the commission of cunnilingus. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.

### **Element 2 - Additional factor**

The second element is that, at the time of the offense, *<insert as appropriate and tailor to the facts of the case:>*

- **§ 53a-71 (a) (1):** the complainant was thirteen years of age or older but under sixteen years of age and the defendant was more than three years older than the complainant at the time this offense was committed.
  - **§ 53a-71 (a) (2):** the complainant was mentally defective to the extent that (he/she) was unable to consent to such sexual intercourse. "Mentally defective" means that a person suffers from a mental disease or defect that renders such person incapable of appraising the nature of such person's conduct. The person's condition must not have been a temporary condition, but a standing disease or defect of mind. It is sufficient if the condition made (him/her) unable to understand the defendant's conduct.
  - **§ 53a-71 (a) (3):** the complainant was physically helpless. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate the unwillingness to an act. That is, the complainant was unable by reason of (his/her) physical condition to do anything and was, therefore, incapable of consenting. The helplessness referred to is separate and apart from any mental condition.
  - **§ 53a-71 (a) (4):** the complainant was less than eighteen years old, and the defendant was (the complainant's guardian / responsible for the general supervision of the complainant's welfare).
  - **§ 53a-71 (a) (5):** the complainant was in custody of law or detained in a hospital or other institution and the defendant had supervisory or disciplinary authority over (him/her).
  - **§ 53a-71 (a) (6):** the defendant was a psychotherapist and the complainant was *<insert as appropriate:>*
    - a patient of the defendant and the sexual intercourse occurred during the psychotherapy session.
    - a patient or former patient of the defendant and (he/she) was emotionally dependent upon the defendant.
    - a patient or former patient of the defendant and the sexual intercourse occurred by means of therapeutic deception.
- <Include appropriate definitions:>*
- "Psychotherapist" means a physician, psychologist, nurse, substance abuse counselor, social worker, clergyman, marital and family therapist, mental health service provider, hypnotist or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

- "Psychotherapy" means the professional treatment, assessment or counseling of a mental or emotional illness, symptom or condition.
- "Emotionally dependent" means that the nature of the patient or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the patient or former patient is unable to withhold consent to sexual intercourse with the psychotherapist.
- "Therapeutic deception" means a representation by a psychotherapist that sexual intercourse with the psychotherapist is consistent with or part of the patient's treatment.
- **§ 53a-71 (a) (7):** the defendant accomplished the sexual intercourse by means of a false representation that the sexual intercourse was for a bona fide medical purpose by a health care professional.
- **§ 53a-71 (a) (8):** the defendant was a school employee and the complainant was a student enrolled in a school in which the defendant worked or a school under the jurisdiction of the local or regional board of education which employed the defendant. "School employee" means either a teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or a private elementary, middle or high school or working in a public or private elementary, middle or high school; or any other person who, in the performance of his or her duties, has regular contact with students and who provides services to or on behalf of students enrolled in a public elementary, middle or high school, pursuant to a contract with the local or regional board of education or in a private elementary, middle or high school pursuant to a contract with the supervisory agent of the private school.
- **§ 53a-71 (a) (9):** the defendant (was a coach in an athletic activity / provided intensive, ongoing instruction) and the complainant was a recipient of the (coaching / instruction) from the defendant, and the complainant was (a secondary school student and received the (coaching / instruction) in a secondary school setting / under eighteen years of age).
- **§ 53a-71 (a) (10):** the defendant was twenty years of age or older and stood in a position of power, authority or supervision over the complainant by virtue of the defendant's professional, legal, occupational or volunteer status and the complainant's participation in a program or activity, and the complainant was under eighteen years of age.
- **§ 53a-71 (a) (11):** the complainant is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the defendant has supervisory or disciplinary authority over (him/her).

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) sexual intercourse took place between the defendant and the complainant and 2) *<insert additional factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 7.1-11A Sexual Assault in the Fourth Degree -- § 53a-73a

**Note:** This instruction is for crimes committed before October 1, 2007.

The defendant is charged [in count \_\_\_] with sexual assault in the fourth degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the fourth degree when such person intentionally *<insert appropriate subsection:>*

- **§ 53a-73a (a) (1) (A):** subjects another person to sexual contact and such other person is under fifteen years of age.
- **§ 53a-73a (a) (1) (B):** subjects another person to sexual contact and such other person is mentally defective or mentally incapacitated to the extent that such person is unable to consent to such sexual contact.
- **§ 53a-73a (a) (1) (C):** subjects another person to sexual contact and such other person is physically helpless.
- **§ 53a-73a (a) (1) (D):** subjects another person to sexual contact and such other person is less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare.
- **§ 53a-73a (a) (1) (E):** subjects another person to sexual contact and such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such person.

For you to find the defendant guilty of this charge, the state must first prove beyond a reasonable doubt the following elements:

### **Element 1 - Sexual contact**

The first element is that the defendant intentionally subjected the complainant to sexual contact. "Sexual contact" means any contact by the defendant with the intimate parts of the complainant or contact of the intimate parts of the defendant with the complainant. "Intimate parts" means the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts. To constitute sexual contact there must be an actual touching. There need not be, however, direct contact with the unclothed body of the other person or the defendant. It is enough if the touching of the genital area, groin, anus, inner thighs, buttocks or breast was through the other person's clothing or the defendant's clothing.

### **Element 2 - Intent**

The second element is that defendant had the specific intent to (obtain sexual gratification / degrade or humiliate the complainant). A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Element 3 - Additional factor**

The third element is that, at the time of the offense, *<insert as appropriate and tailor to the facts of the case:>*

- **§ 53a-73a (a) (1) (A):** the complainant was under fifteen years of age.

- **§ 53a-73a (a) (1) (B):** the complainant was mentally defective or mentally incapacitated to the extent that (he/she) was unable to consent to such sexual intercourse. "Mentally defective" means that a person suffers from a mental disease or defect that renders such person incapable of appraising the nature of such person's conduct. The person's condition must not have been a temporary condition, but a standing disease or defect of mind. It is sufficient if the condition made (him/her) unable to understand the defendant's conduct. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent.
- **§ 53a-73a (a) (1) (C):** the complainant was physically helpless. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. That is, the complainant was unable by reason of (his/her) physical condition to do anything and was, therefore, incapable of consenting. The helplessness referred to is separate and apart from any mental condition.
- **§ 53a-73a (a) (1) (D):** the complainant was less than eighteen years old at the time this offense was committed, and the defendant was (the complainant's guardian / responsible for the general supervision of the complainant's welfare).
- **§ 53a-73a (a) (1) (E):** the complainant was in custody of law or detained in a hospital or other institution and the defendant had supervisory or disciplinary authority over (him/her).

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant intentionally subjected the complainant to sexual contact, 2) (he/she) specifically intended to (obtain sexual gratification / degrade or humiliate the complainant), and 3) *<insert additional factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the fourth degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 7.1-11B Sexual Assault in the Fourth Degree -- § 53a-73a (a) (1)

**Note:** This instruction is for crimes committed on or after October 1, 2007 and before October 1, 2013. For the instruction for crimes committed before October 1, 2007, see Instruction 7.1-11A in the Archive.

The defendant is charged [in count \_\_\_] with sexual assault in the fourth degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of sexual assault in the fourth degree when such person intentionally subjects another person to sexual contact and *<insert appropriate subsection:>*

- **§ 53a-73a (a) (1) (A):** such other person is under thirteen years of age and the defendant is more than two years older.
- **§ 53a-73a (a) (1) (B):** such other person is thirteen years of age or older but under fifteen years of age and the actor is more than three years older than such other person.
- **§ 53a-73a (a) (1) (C):** such other person is mentally defective or mentally incapacitated to the extent that such person is unable to consent to such sexual contact.
- **§ 53a-73a (a) (1) (D):** such other person is physically helpless.
- **§ 53a-73a (a) (1) (E):** such other person is less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare.
- **§ 53a-73a (a) (1) (F):** such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such person.

For you to find the defendant guilty of this charge, the state must prove beyond a reasonable doubt the following elements:

### **Element 1 - Sexual contact**

The first element is that the defendant intentionally subjected the complainant to sexual contact. "Sexual contact" means any contact by the defendant with the intimate parts of the complainant or contact of the intimate parts of the defendant with the complainant. "Intimate parts" means the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts. To constitute sexual contact there must be an actual touching. There need not be, however, direct contact with the unclothed body of the other person or the defendant. It is enough if the touching of the genital area, groin, anus, inner thighs, buttocks or breast was through the other person's clothing or the defendant's clothing.

### **Element 2 - Intent**

The second element is that defendant had the specific intent to (obtain sexual gratification / degrade or humiliate the complainant). A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. *<See Intent: Specific, Instruction 2.3-1.>*

### **Element 3 - Additional factor**

The third element is that, at the time of the offense, *<insert as appropriate and tailor to the facts of the case:>*

- **§ 53a-73a (a) (1) (A):** the complainant was under thirteen years of age and the defendant was more than two years older.
- **§ 53a-73a (a) (1) (B):** the complainant was thirteen years of age or older but under fifteen years of age and the defendant was more than three years older.
- **§ 53a-73a (a) (1) (C):** the complainant was mentally defective or mentally incapacitated to the extent that (he/she) was unable to consent to such sexual intercourse. "Mentally defective" means that a person suffers from a mental disease or defect that renders such person incapable of appraising the nature of such person's conduct. The person's condition must not have been a temporary condition, but a standing disease or defect of mind. It is sufficient if the condition made (him/her) unable to understand the defendant's conduct. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent.
- **§ 53a-73a (a) (1) (D):** the complainant was physically helpless. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. That is, the complainant was unable by reason of (his/her) physical condition to do anything and was, therefore, incapable of consenting. The helplessness referred to is separate and apart from any mental condition.
- **§ 53a-73a (a) (1) (E):** the complainant was less than eighteen years old at the time this offense was committed, and the defendant was (the complainant's guardian / responsible for the general supervision of the complainant's welfare).
- **§ 53a-73a (a) (1) (F):** the complainant was in custody of law or detained in a hospital or other institution and the defendant had supervisory or disciplinary authority over (him/her).

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that 1) the defendant intentionally subjected the complainant to sexual contact, 2) (he/she) specifically intended to (obtain sexual gratification / degrade or humiliate the complainant), and 3) *<insert additional factor>*.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of sexual assault in the fourth degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 7.1-13A Affirmative Defense to Sexual Assault -- § 53a-67

**Note: This instruction is for crimes committed before October 1, 2013.**

The state has the burden of proving beyond a reasonable doubt that the defendant committed each of the elements of the crime of *<insert specific offense>* as I have defined them for you. If you are satisfied that the state has proved these elements beyond a reasonable doubt, you must still consider whether the defendant has proved (his/her) affirmative defense.

*<Insert Affirmative Defense, Instruction 2.9-1.>*

### **A. Affirmative defense under § 53a-67 (a):**

The statute defining this defense provides as follows:

in any prosecution for *<insert specific offense>* based on the complainant's being mentally defective, mentally incapacitated or physically helpless, it shall be an affirmative defense that the defendant at the time (he/she) engaged in the conduct constituting the offense, did not know of such condition of the complainant.

### **Conclusion**

*<Substitute for the concluding paragraph in the offense instruction.>* If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of *<insert specific offense>*, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved by a preponderance of the evidence that (he/she) did not know at the time of the offense that the complainant was (mentally defective / mentally incapacitated / physically helpless), then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

### **B. Affirmative defense under § 53a-67 (b):**

**Note: This defense does not apply to §§ 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b. It thus applies only to fourth degree sexual assault (§ 53a-73a).**

The statute defining this defense provides as follows:

in any prosecution for *<insert specific offense>* it shall be an affirmative defense that the defendant and the complainant were, at the time of the alleged offense, living together by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship.

The defendant claims that (he/she) and the complainant were, at the time of the alleged offense, living together by mutual consent in the relationship of cohabitation. "Cohabitation" means actually living together by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship. Simply living together is not sufficient. The relationship of cohabitation includes all of the many facets of married life in addition to sexual relations. There

must be a mutual assumption of the marital rights, duties, and obligations that are usually manifested by married people.

### **Conclusion**

*<Substitute for the concluding paragraph in the offense instruction.>* If you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty and not consider (his/her) affirmative defense.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of *<insert specific offense>*, then you shall consider the defendant's affirmative defense. If you unanimously find that the defendant has proved by a preponderance of the evidence that the defendant and the complainant were living together by mutual consent in a relationship of cohabitation, then you shall find the defendant not guilty. If you unanimously find that the defendant has not proved (his/her) affirmative defense by a preponderance of the evidence, then you shall find the defendant guilty.

## 9.2-2A Burglary in the Second Degree -- § 53a-102

### (a) (1)

**Note:** This instruction is accurate for crimes committed before March 1, 2008. Public Acts, Jan. Spec. Sess., 2008, No. 08-1, §§ 2 and 3, moved § 53a-102 (a) (1) to § 53a-101 (a) (3), making a burglary to a dwelling at night first degree rather than second degree burglary.

The defendant is charged [in count \_\_\_] with burglary in the second degree. The statute defining this offense reads in pertinent part as follows:

a person is guilty of burglary in the second degree when such person unlawfully (enters / remains in) a dwelling at night with intent to commit a crime therein.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

#### **Element 1 - Entered/remained in dwelling**

The first element is that the defendant knowingly and unlawfully (entered / remained in) a dwelling.

"Dwelling" means a building that is usually occupied by a person lodging therein at night, whether or not a person is actually present. Therefore, a structure that cannot possibly be occupied as a lodging cannot be a dwelling. It need not, however, be actually occupied by any person at the time of crime; it does not lose its character as a dwelling merely because it is temporarily unoccupied, if such occupancy at night is its usual state.

You must also determine whether the defendant unlawfully (entered / remained in) the dwelling. A person unlawfully (enters / remains in) a dwelling when (he/she) is not licensed or privileged to do so. To be "licensed or privileged," the defendant must either have consent from the person in possession of the dwelling or have some other right to be in the dwelling.

[To "enter" a dwelling the intruder need not necessarily place (his/her) entire body inside the dwelling. Inserting any part of (his/her) body, or an implement or weapon held by (him/her), within the dwelling is sufficient to constitute an entry as long as it is without license or privilege. It does not matter how an intruder may actually have entered; if (he/she) did so without license or privilege, (he/she) has entered unlawfully.]

[A person may have entered a dwelling lawfully, that is, (he/she) had the right or had been given permission, but that right is terminated or the permission withdrawn by someone who had a right to terminate or withdraw it. You may find that the defendant "unlawfully remained" in the dwelling under these circumstances.]

#### **Element 2 - At night**

The second element is that the defendant (entered / remained in) the dwelling at night. "Night" means the period between thirty minutes after sunset and thirty minutes before sunrise.

**Element 3 - Intent to commit a crime**

The third element is that the defendant intended to commit a crime in that dwelling. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

Even if the defendant never actually committed a crime in the dwelling, if the evidence establishes beyond a reasonable doubt that (he/she) was there with such intention, this is sufficient to prove that the defendant unlawfully (entered / remained in) the dwelling with the intent to commit a crime therein. Furthermore, the necessary intent to commit a crime must be an intent to commit either a felony or a misdemeanor in addition to the unlawful entering or remaining in the dwelling.

In this case, the state claims that the defendant intended to commit <insert crime>.

**Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) unlawfully (entered / remained in) a dwelling, 2) it was at night, and 3) (he/she) had the intent to commit a crime.

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of burglary in the second degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.3-1A Identity Theft -- § 53a-129a, § 53a-129b, § 53a-129c, and § 53a-129d

**Note:** This instruction is for crimes committed before October 1, 2009.

**Note:** Identity theft is defined in § 53a-129a. The degree of identity theft depends on the value of the items obtained. See § 53a-129b (first degree: exceeds \$10,000); § 53a-129c (second degree: exceeds \$5,000); § 53a-129d (third degree: no value specified).

The defendant is charged [in count \_\_\_] with identity theft in the (first / second / third) degree.

The statute defining this offense reads in pertinent part as follows:

a person commits identity theft when (he/she) intentionally obtains personal identifying information of another person without the authorization of such other person and uses such information to obtain [or attempt to obtain] (money / credit / goods / services / property / medical information) in the name of such other person without the consent of such other person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Obtained information without authorization**

The first element is that the defendant intentionally obtained the personal identifying information of the complainant without (his/her) authorization. A person acts "intentionally" with respect to a result when (his/her) conscious objective is to cause such result. <See *Intent: Specific, Instruction 2.3-1.*>

"Personal identifying information" means any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation.

### **Element 2 - Used information without consent**

The second element is that the defendant used the personal identifying information to obtain [or attempt to obtain] (money / credit / goods / services / property / medical information) in the name of such other person without the consent of such other person. A person does an act "without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

[<Include element 3 only for first and second degree:>

### **Element 3 - Value of property obtained**

The third element is the value of the <identify property> obtained by the defendant using <insert name of complainant>'s personal identifying information. The value of the (money / credit /

goods / services / property) obtained [or attempted to be obtained] must exceed *<insert as appropriate:>*

- **First degree:** \$10,000.
- **Second degree:** \$5,000.

For purposes of determining whether the state has proved the alleged degree of identity theft, the value of the (money / credit / goods / services / property) shall be ascertained as follows: "Value" here means the market value of the goods, services, or property at the time and place of the crime. "Market value" means the price that would, in all probability, result from fair negotiations between willing buyers and sellers at the time and place of the crime; the probability being based upon the evidence in the case.

If you can determine the price the property sold for at the time of the crime, then that is the controlling value. If the market value cannot be determined, then you should consider the replacement cost of the goods or services within a reasonable time after the crime.]

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) intentionally obtained *<insert name of complainant>*'s personal identifying information without the consent of *<insert name of complainant>* [and] 2) used that information to obtain [or attempt to obtain] something of value in the name of the complainant, [*<insert only for first or second degree:>*], and 3) the value of the *<identify property>* exceeded (\$10,000 / \$5,000).]

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of identity theft in the (first / second / third) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.

## 10.3-1B Identity Theft -- § 53a-129a, § 53a-129b, § 53a-129c, and § 53a-129d

**Note:** This instruction is for crimes committed on or after October 1, 2009 and before October 1, 2011. Public Acts 2009, No. 09-239, §§ 1-3, redefined identity theft and added provision with a lower dollar amount if the victim is over 60 years of age. For the instruction for crimes committed before October 1, 2009, see Instruction 10.3-1A in the Archive.

**Note:** Identity theft is defined in § 53a-129a. The degree of identity theft depends on the value of the items obtained and the age of the victim. See § 53a-129b (first degree); § 53a-129c (second degree); § 53a-129d (third degree).

The defendant is charged [in count \_\_\_] with identity theft in the (first / second / third) degree. The statute defining this offense reads in pertinent part as follows:

a person commits identity theft when (he/she) knowingly uses personally identifying information of another person to obtain [or attempt to obtain], in the name of the other person, (money / credit / goods / services / property / medical information) without the consent of such other person.

For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt:

### **Element 1 - Knowingly used personal identifying information of another person**

The first element is that the defendant knowingly used the personal identifying information of the complainant. A person acts "knowingly" with respect to conduct or circumstances when (he/she) is aware that (his/her) conduct is of such nature or that such circumstances exist. <See Knowledge, Instruction 2.3-3.>

"Personal identifying information" means any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation.

### **Element 2 - Obtained property**

The second element is that the defendant used the personal identifying information to obtain [or attempt to obtain] (money / credit / goods / services / property / medical information) in the name of the complainant. The property that the defendant allegedly obtained in the name of <insert name of complainant> is <identify the property>.

### **Element 3 - Without consent**

The third element is that the defendant did not have the consent of *<insert name of complainant>* to obtain this property in (his/her) name. A person does an act "without consent of another person" when (he/she) lacks such other person's agreement or assent to engage in the act.

[*<Include element 4 only for first and second degree if the victim is under 60 years of age, and only for first degree if the victim is over 60 years of age.>*]

### **Element 4 - Value of property obtained**

- *<If victim is over 60 years of age:>* The fourth element is the value of the property obtained [or attempted to be obtained] by the defendant using *<insert name of complainant>*'s personal identifying information. The value must exceed \$10,000.
- *<If victim is under 60 years of age:>* The fourth element is the value of the property obtained [or attempted to be obtained] by the defendant using *<insert name of complainant>*'s personal identifying information. The value must exceed:
  - **First degree:** \$10,000.
  - **Second degree:** \$5,000.

For purposes of determining whether the state has proved the alleged degree of identity theft, the value of the (money / credit / goods / services / property) shall be ascertained as follows: "Value" here means the market value of the goods, services, or property at the time and place of the crime. "Market value" means the price that would, in all probability, result from fair negotiations between willing buyers and sellers at the time and place of the crime; the probability being based upon the evidence in the case.

If you can determine the price the property sold for at the time of the crime, then that is the controlling value. If the market value cannot be determined, then you should consider the replacement cost of the goods or services within a reasonable time after the crime.]

[*<Include element 5 only for first and second degree if the victim is over 60 years of age.>*]

### **Element 5 - Age of complainant**

The fifth element is that the complainant was over 60 years of age at the time.]

### **Conclusion**

In summary, the state must prove beyond a reasonable doubt that the defendant 1) knowingly used *<insert name of complainant>*'s personal identifying information, 2) obtained [or attempted to obtain] something of value in the name of the complainant, [and] 3) did so without the consent of *<insert name of complainant>*, [4] the value of the property exceeded (\$10,000 / \$5,000), and 5) the complainant was over 60 years of age.]

If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of identity theft in the (first / second / third) degree, then you shall find the defendant guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find the defendant not guilty.