**MONTANA CRIMINAL JURY INSTRUCTIONS**

**2018 CUMULATIVE SUPPLEMENT**

**TO THE 2009 EDITION**

Includes legislative changes enacted since 2007, up to and including changes enacted during the 2017 Session

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**HOW TO USE THIS SUPPLEMENT**

The Montana Criminal Jury Instructions, including this 2018 Cumulative Supplement to the 2009 Edition, are solely the product the Criminal Jury Instruction Commission of the Supreme Court of the State of Montana. The Commission is comprised of eight volunteers appointed by the Montana Supreme Court. The Commission members are attorneys who primarily practice in the area of criminal law at the trial and appellate levels, educators in this area, and district court judges. Except where specifically noted in the comments to an instruction, the Montana Supreme Court has **not** “pre-approved” the language found in any of these instructions. The parties and the court must use their own independent legal judgment when drafting jury instructions for a particular case.

The 2018 Cumulative Supplement is intended to be used in conjunction with the 2009 Edition of the Montana Criminal Jury Instructions. This Supplement reflects amendments to the statutes defining the elements of criminal offenses enacted since 2007, up to and including the legislative changes enacted during the 2017 legislative session. If the statute defining a particular offense has been amended since 2007, the jury instructions for that offense can be located in the 2018 Cumulative Supplement. If the statute defining a particular offense has not been amended since 2007, the jury instructions for that offense can still be located in the 2009 Edition. As always, which statute—and thus which jury instruction—applies will depend upon the date of the offense in question.

The 2018 Cumulative Supplement was formally adopted by the Commission on January 4, 2019.

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INSTRUCTION NO. **[1-121]**

**[Cautionary Instruction for Potentially Hung Jury]**

The judicial process assigns tasks to the people involved in the case. It is the task of the witnesses to testify truthfully to the facts as they recall them. It is the task of the lawyers to prepare the case for final submission to the trier of the facts, the jury. It is the task of the Judge to preside, to instruct you as to the law, and to rule on whether certain evidence will be allowed at trial. It is the task of the jury to decide the case. You are not partisan nor are you advocates in this matter; you are neutral judges of the facts. It is you and you alone that can decide this cause. There is no reason to believe that any other 12 people would possess any more ability, intelligence, and courage to do the task assigned to a jury under the American system of justice.

The purpose of this instruction is to encourage you to collaborate with your fellow jurors in order to reach a just and fair verdict in this case. This instruction is not meant to coerce or to force a verdict. You should take as much time as needed in your deliberations.

You should not surrender your honest convictions in this matter for the mere purpose of returning a verdict or solely because of the opinion of other jurors. This does not mean, however, that you should avoid your task of rendering a verdict in this case.

This instruction is not more important than any other instruction I have previously given you. You should consider this instruction together with, and as part of, all the other instructions. Please return to your jury room and, again, diligently and earnestly resume your deliberations.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 1-121 (2017)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Cautionary Instruction for Potentially Hung Jury, No. 1-121, 2018 Supp., Source and Comment]**

SOURCE: *State v. Norquay*, 2011 MT 34, ¶ 43, 359 Mont. 257, 268-69, 248 P.3d 817, 824-25.

COMMENT: This instruction is identical to the language adopted by the Montana Supreme Court in *State v. Norquay.*

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INSTRUCTION NO. **[5-101]**

**[Deliberate Homicide]**

A person commits the offense of deliberate homicide if the person

**[purposely or knowingly causes the death of another human being.]**

**OR**

**[(attempts to commit) (commits) (is legally accountable for {the attempt} {commission} of) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a forcible felony, and in the course of the forcible felony or flight thereafter, (the person) (any person legally accountable for the crime) causes the death of another human being.]**

**OR**

**[purposely or knowingly causes the death of a fetus of another with knowledge that the woman is pregnant.]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-101 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Deliberate Homicide, No. 5-101, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-102 (2017).

COMMENT: If the Defendant is charged with deliberate homicide by purposely

or knowingly causing the death of a human being under MCA § 45-5-102(1)(a), MCJI 5-101(a) should be given.

If the Defendant is charged with felony murder under MCA § 45-5-102(1)(b), MCJI 5-101(b) should be given.

If the Defendant is charged with deliberate homicide of a fetus under MCA § 45-5-102(1)(c)), MCJI 5-101(a) and MCJI 5-101(c) defining a fetus should be given.

INSTRUCTION NO. **[5-101(a)]**

**[Issues in Deliberate Homicide—Not Felony Murder]**

To convict the Defendant of deliberate homicide, the State must prove the following elements:

1. That the Defendant caused the death of **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a human being] [a fetus of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**;

**AND**

2. That the Defendant acted purposely or knowingly;

**[AND**

**3. That the Defendant knew that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was pregnant.]**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-101(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Deliberate Homicide, No. 5-101(a), 2018 Supp., Source and Comment]**

SOURCE: MCA §§ 45-5-102(1) (2017).

COMMENT: This Instruction should be given in conjunction with MCJI 5-101 defining deliberate homicide.

Element number 3 regarding knowledge of the pregnancy should only be given if the Defendant is charged with deliberate homicide of a fetus under MCA § 45-5-102(1)(c). MCJI 5-101(c) defining a fetus should also be given.

If the Defendant is charged under the felony murder rule in

MCA § 45-5-102(1)(b), this Instruction should not be given and MCJI 5-101(b) should be given instead. If both deliberate homicide theories are submitted to the jury, the Alternative Charge Instruction, MCJI 1-108, should be given. The verdict form should clearly reflect that the Defendant can only be found guilty of one of the alternative theories.

INSTRUCTION NO. **[5-101(c)]**

**[Definition of “Fetus”]**

A fetus is an organism of the species Homo sapiens from 8 weeks of development until complete expulsion or extraction from a woman’s body.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-101(c) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Fetus,” No. 5-101(c), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-116(3) (2017).

COMMENT: This definition should be given if the Defendant is charged

with deliberate homicide of a fetus of another under

MCA § 45-5-102(1)(c), or mitigated deliberate homicide of a fetus of another under MCA § 45-5-103, or where mitigated deliberate homicide of a fetus of another is raised as a lesser included offense.

INSTRUCTION NO. **[5-102]**

**[Mitigated Deliberate Homicide]**

A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of **[another human being] [a fetus of another knowing that the woman is pregnant]** but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse.

The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the Defendant’s situation.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-102 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Mitigated Deliberate Homicide, No. 5-102, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-103 (2017).

COMMENT: For examples of evidence of “extreme mental or emotional stress,”

*see* *State v. Miller,* 1998 MT 177, 966 P.2d 721 and *State v.*

*Howell*, 1998 MT 20, 954 P.2d 1102.

If mitigated deliberate homicide is raised as a lesser included

offense, this Instruction and MCJI No. 5-102(b) should be given. Do not give MCJI 5-102(a) if mitigated homicide is raised as a lesser included offense.

INSTRUCTION NO. **[5-102(a)]**

**[Issues in Mitigated Deliberate Homicide]**

To convict the Defendant of mitigated deliberate homicide, the State must prove the following elements:

1. That the Defendant caused the death of **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a human being] [a fetus of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**;

**AND**

2. That the Defendant did so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse;

**AND**

3. That the Defendant acted purposely or knowingly;

[**AND**

**4. That the Defendant knew that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was pregnant.]**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-102(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Mitigated Deliberate Homicide, No. 5-102(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-103 (2017)

COMMENT: This Instruction should be given only where the State charges

mitigated deliberate homicide. If mitigated deliberate homicide

is raised as a lesser included offense, MCJI 5-102(b)

should be given instead.

Element 4 should only be given when the State has charged the Defendant with deliberate homicide of a fetus. MCJI 5-101(c) defining a fetus should also be given.

INSTRUCTION NO. **[5-102(b)]**

**[Mitigated Deliberate Homicide as a Lesser Included Offense]**

The Defendant is charged with deliberate homicide. Mitigated deliberate homicide is a lesser-included offense of deliberate homicide. The Defendant cannot be convicted of more than one of these offenses.

You must first consider whether the State has proved the offense of deliberate homicide. In order to find the Defendant guilty of deliberate homicide, the State must prove the following two elements:

1. That the Defendant caused the death of **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a human being] [a fetus of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**;

**AND**

2. That the Defendant acted purposely or knowingly;

[**AND**

**3. That the Defendant knew that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was pregnant.]**

If you find from your consideration of all the evidence that the State has not proved these elements, you need go no further as you will have reached a verdict of not guilty in this case.

However, if you find from your consideration of all the evidence that the State has proved these two elements, you must then consider whether there were mitigating circumstances, that is, whether the Defendant was acting under the influence of extreme mental or emotional stress for which there is reasonable explanation of excuse. Neither party has the burden of proof as to mitigating circumstances. Either party may present evidence of mitigation. You must determine the reasonableness of such explanation or excuse from the viewpoint of a reasonable person in the Defendant’s situation.

If you find from you consideration of all the evidence that the Defendant was acting under the influence of extreme mental or emotional stress for which there is a reasonable explanation or excuse, you must find the Defendant not guilty of the offense of deliberate homicide, and guilty of the offense of mitigated deliberate homicide.

If, on the other hand, you find the Defendant was not acting under the influence of extreme mental emotional stress for which there is reasonable explanation or excuse, you must find the Defendant guilty of the offense of deliberate homicide, and not guilty of the offense of mitigated deliberate homicide.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-102(b) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_**[Mitigated Deliberate Homicide as a Lesser Included Offense, No. 5-102(b), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-103 (2017).

COMMENT: This Instruction should only be given in cases in which the jury will be instructed on mitigated deliberate homicide as a lesser-included offense. If the Defendant is charged with mitigated deliberate homicide, Instruction No. 5-102(a) should be given instead of this Instruction.

This Instruction should be used in conjunction with the model special verdict form for mitigated deliberate homicide as a lesser included offense. The general lesser included offense instruction, MCJI 1-111, should not be given unless there are additional counts charged or other lesser included offenses justified by the evidence that would require that instruction.

Element number 3 should only be given be given when the State has charged the Defendant with deliberate homicide of a fetus under MCA 45-5-103. MCJI 5-101(c) defining a fetus should be given as well.

*See State v. MacGregor*, 2013 MT 297A, 372 Mont. 142, 311 P.3d 428; *Demontiney v. Montana Twelfth Judicial Dist. Ct.*, 2002 MT 161, 310 Mont. 406, 51 P.3d 476; *State v. Scarborough*, 2000 MT 301, 302 Mont. 350, 14 P.3d 1202.

INSTRUCTION NO. **[5-105]**

**[Vehicular Homicide While Under the Influence]**

A person commits the offense of vehicular homicide while under the influence if the person negligently causes the death of another human being while the person is operating a motor vehicle while in violation of Montana Code Annotated § **[61-8-401, driving under the influence of alcohol or drugs]** **[61-8-406, operating a vehicle with an alcohol concentration of .08 or more] [61-8-411, operating a vehicle while under the influence of delta-9-tetrahydrocannabinol].**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-105 (2018 Supp.)

Plaintiff’s Proposed Instruction No.\_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No.\_\_\_\_\_ Refused\_\_\_\_\_ Withdrawn\_\_\_\_\_ By\_\_\_\_\_

**[Vehicular Homicide While Under the Influence, No. 5-105, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-106(1) (2017).

COMMENT: The jury should also be instructed on the applicable underlying traffic offense.

If the State alleges the defendant violated § 61-8-401, MCA, the following instructions should be given:

MCJI 10-101 (if applicable—see comment therein)

MCJI 10-102

MCJI 10-102(a)

MCJI 10-102(b)

MCJI 10-102(c)

If the State alleges the defendant violated § 61-8-406, MCA, the following instructions should be given:

MCJI 10-103

MCJI 10-103(a)

MCJI 10-103(b)

If the State alleges the defendant violated § 61-8-411, MCA, the following instructions should be given:

MCJI 10-107

MCJI 10-107(a)

Unless the Defendant is charged with the underlying traffic offense, the instructions listing the elements of the pertinent traffic offense—MCJI 10-101(a), MCJI 10-103(a) and MCJI 10-107(a)—should be modified to state that “To find that the Defendant was operating a motor vehicle in violation of [insert the statutory provision and offense name here], you must find the state proved the following elements beyond a reasonable doubt:” and the two concluding paragraphs in each instruction regarding finding the Defendant guilty or not guilty should be deleted.

MCA § 45-5-106(2) provides that vehicular homicide while under the influence is not a lesser included offense of felony murder as provided in MCA § 45-5-102(1)(b).

INSTRUCTION NO. **[5-105(a)]**

**[Issues in Vehicular Homicide While Under the Influence]**

To convict the Defendant of Vehicular Homicide While Under the Influence, the State must prove the following elements:

1. That the Defendant caused the death of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

2. That at the time the Defendant caused the death of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, the Defendant was operating a vehicle in violation of Montana Code Annotated § **[61-8-401, driving under the influence of alcohol or drugs] [61-8-406, operating a vehicle with an alcohol concentration of .08 or more] [61-8-411, operating a vehicle while under the influence of delta-9-tetrahydrocannabinol]** asdefined in Instructions Nos. \_\_\_ through \_\_\_;

**AND**

3. That the Defendant acted negligently.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-105(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Vehicular Homicide While Under the Influence, No. 5-105(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-106(1) (2017).

COMMENT: The jury should also be instructed on the applicable underlying traffic offense, and the blanks should be filled in with the instruction numbers corresponding to the instructions discussing the underlying offense.

If the State alleges the defendant violated § 61-8-401, MCA, the following instructions should be given:

MCJI 10-101 (if applicable—see comment therein)

MCJI 10-102

MCJI 10-102(a)

MCJI 10-102(b)

MCJI 10-102(c)

If the State alleges the defendant violated § 61-8-406, MCA, the following instructions should be given:

MCJI 10-103

MCJI 10-103(a)

MCJI 10-103(b)

If the State alleges the defendant violated § 61-8-411, MCA, the following instructions should be given:

MCJI 10-107

MCJI 10-107(a)

Unless the Defendant is charged with the underlying traffic offense, the instructions listing the elements of the pertinent traffic offense—MCJI 10-101(a), MCJI 10-103(a) and MCJI 10-107(a)—should be modified to state that “To find that the Defendant was operating a motor vehicle in violation of [insert the statutory provision and offense name here], you must find the state proved the following elements beyond a reasonable doubt:” and the two concluding paragraphs in each instruction regarding finding the Defendant guilty or not guilty should be deleted.

INSTRUCTION NO. **[5-123]**

**[Definition of “Consent”—Sexual Crimes]**

As used in these instructions, the term “consent” means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact.

An expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn.

A current or previous dating or social or sexual relationship by itself, or the manner of the dress of the person involved with the Defendant in the conduct at issue does not constitute consent.

Lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-123 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Consent”—Sexual Crimes, No. 5-123, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-501(1)(a) (2017).

COMMENT: This definition generally applies when the Defendant is charged with sexual assault under MCA § 45-5-502, sexual intercourse without consent under MCA § 45-5-503, or aggravated sexual intercourse without consent under MCA § 45-5-508.

MCJI 5-123(a), defining a person who is incapable of consenting to sexual intercourse, and MCJI 5-123(b), defining when a person’s consent to sexual contact is ineffective, may replace this instruction.

INSTRUCTION NO. **[5-123(a)]**

**[Definition of a “Person Who is Incapable of Consent”—Sexual Intercourse Without Consent and Aggravated Sexual Intercourse Without Consent]**

A “person who is incapable of consent” means a person who is:

**[mentally disordered or incapacitated.]**

**OR**

**[physically helpless.]**

**OR**

**[overcome by deception, coercion, or surprise.]**

**OR**

**[less than 16 years old.]**

**OR**

**[(incarcerated in an adult or juvenile correctional, detention, or treatment facility) (is on probation or parole) and the Defendant is (an employee) (a contractor) (a volunteer) of the supervising authority who has supervisory or disciplinary authority over the person, unless the act is part of a lawful search.]**

**OR**

**[receiving services from a youth care facility and the Defendant is (an employee) (a contractor) (a volunteer) of the youth care facility who (has supervisory or disciplinary authority over the person) (is providing treatment to the person).]**

**OR**

**[(admitted to a mental health facility) (admitted to a community-based facility) (admitted to a residential facility) (receiving community-based services) and the Defendant is (an employee) (a contractor) (a volunteer) of the (facility) (community-based service) who (has supervisory or disciplinary authority over the person) (is providing treatment to the person).]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-123(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Person Incapable of Consent”—Sexual Intercourse Without Consent or Aggravated Sexual Intercourse Without Consent, No. 5-123(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-501(1)(a) (2017).

COMMENT: This definition only applies if the Defendant has been charged with sexual intercourse without consent under MCA § 45-5-503 or aggravated sexual intercourse without consent under MCA § 45-5-508, and the State has alleged that the victim was incapable of consenting to sexual intercourse for one of the listed reasons. It should not be given if the Defendant is charged with sexual assault under MCA § 45-5-502.

The following statutory definitions should also be provided if applicable in a given case:

Youth care facility, as defined in MCA § 52-2-602

Mental health facility, as defined in MCA § 53-21-102

Community-based facility or residential facility, as defined in MCA § 53-20-102

Community-based services, as defined in MCA 53-20-102

INSTRUCTION NO. **[5-123(b)]**

**[When Consent is “Ineffective”—Sexual Assault]**

Consent is ineffective if the person attempting to give consent to sexual contact is:

**[(incarcerated in an adult or juvenile correctional, detention, or treatment facility) (is on probation or parole) and the Defendant is (an employee) (a contractor) (a volunteer) of the supervising authority, and the Defendant has supervisory or disciplinary authority over the person attempting to give consent, unless the act is part of a lawful search.)**

**OR**

**[less than 14 years old and the Defendant is 3 or more years older than the person attempting to give consent.]**

**OR**

**[receiving services from a youth care facility, and the Defendant is (an employee) (a contractor) (a volunteer) of the youth care facility who (has supervisory or disciplinary authority over) (is providing treatment to) the person attempting to give consent.]**

**OR**

**[(admitted to a mental health facility) (admitted to a community-based facility) (admitted to a residential facility) (receiving community-based services), and the Defendant is (an employee) (a contractor) (a volunteer) of the (facility) (community-based service) who (has supervisory or disciplinary authority over) (is providing treatment to) the person attempting to give consent.]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-123(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[When Consent is “Ineffective”—Sexual Assault, No. 5-123(b), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-502 (2017).

COMMENT: This instruction should only be given if the Defendant is charged with sexual assault under Mont. Code Ann. § 45-5-502 and the State has alleged the victim’s consent was ineffective for one of the reasons listed in Mont. Code Ann. § 45-5-502(5).

This instruction should not be given when the Defendant is charged with sexual intercourse without consent in violation of Mont. Code Ann. § 45-5-503, or aggravated sexual intercourse without consent in violation of Mont. Code Ann. § 45-5-508.

The following statutory definitions should also be provided if applicable in a given case:

Youth care facility, as defined in MCA § 52-2-602

Mental health facility, as defined in MCA § 53-21-102

Community-based facility or residential facility, as defined in MCA § 53-20-102

Community-based services, as defined in MCA 53-20-102

INSTRUCTION NO. **[5-124]**

**[Sexual Assault]**

A person who knowingly subjects another person to any sexual contact without consentcommits the offense of sexual assault.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-124 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Sexual Assault, No. 5-124, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-502(1), (5) (2017).

COMMENT: This Instruction should be used with MCJI 5-123, defining consent, or 5-123(b), defining when consent to sexual contact is ineffective.

MCJI 2-107, defining sexual contact, should also be provided.

INSTRUCTION NO. **[5-124(a)]**

**[Issues in Sexual Assault]**

To convict the Defendant of sexual assault, the State must prove the following elements:

1. That the Defendant subjected \_\_\_\_\_\_\_\_\_\_\_\_\_\_ to sexual contact;

**AND**

2. That the sexual contact was without \_\_\_\_\_\_\_\_\_\_\_\_\_\_’s consent;

**AND**

3. That the Defendant acted knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-124(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Sexual Assault, No. 5-124(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-502(1), (5) (2017).

COMMENT: This Instruction should be used with MCJI 5-123, defining consent, or 5-123(b), defining when consent to sexual contact is ineffective.

MCJI 2-107, defining sexual contact, should also be provided.

The legislature has provided greater penalties for a Defendant who is more than three years older than a victim under the age of 16, and for a Defendant who inflicts bodily injury on anyone in the course of the offense. MCA § 45-5-502(3). When the State seeks to impose the greater penalties found in that statute, MCJI 5-124(b) and the special verdict form in MCJI 1-123 should also be provided. *See* MCA § 46-1-401 (2017).

INSTRUCTION NO. **[5-124(b)]**

**[Determining Sentence Enhancement Factors—Sexual Assault]**

If you find the defendant guilty of sexual assault, as charged inCount \_\_\_, you must then determine whether the State proved beyond a reasonable doubt that **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was less than 16 years old and the Defendant was 3 or more years older than \_\_\_\_\_\_\_\_\_\_\_\_\_] [the Defendant inflicted bodily injury upon anyone in the course of (attempting to commit the sexual assault) (committing the sexual assault) (the flight after the attempt or commission of the sexual assault)].**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-124(b) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No. \_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Determining Sentence Enhancement Factors—Sexual Assault, No. 5-124(b), 2018 Supp., Source and Comment]**

SOURCE: MCA §§ 45-5-502(3), (4) (2017).

COMMENT: The victim’s name should be inserted in the blanks.

The legislature has provided greater penalties for a Defendant who is more than three years older than a victim under the age of 16, and for a Defendant who inflicts bodily injury on anyone in the course of the offense. MCA § 45-5-502(3). This instruction should be used when the State seeks to impose the greater penalties found in that statute. The special verdict form in MCJI 1-123 should also be provided. *See* MCA § 46-1-401 (2017).

INSTRUCTION NO. **[5-125]**

**[Sexual Intercourse Without Consent]**

A person who knowingly has sexual intercourse with another person **[without consent] [who is incapable of consent]** commits the offense of sexual intercourse without consent.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-125 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Sexual Intercourse Without Consent, No. 5-125, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-503 (2017).

COMMENT: This Instruction should be used with MCJI 5-123, defining consent, or 5-123(a), defining a person who is incapable of consenting to sexual intercourse.

The definition of sexual intercourse in MCJI 5-125(b) should also be provided.

INSTRUCTION NO. **[5-125(a)]**

**[Issues in Sexual Intercourse Without Consent ]**

To convict the Defendant of sexual intercourse without consent, the State must prove the following elements:

1. That the Defendant had sexual intercourse with \_\_\_\_\_\_\_\_\_\_\_\_\_;

**AND**

2. **[That the act of sexual intercourse was without \_\_\_\_\_\_\_\_\_\_\_\_\_\_’s consent;] [That \_\_\_\_\_\_\_\_\_\_\_\_ was incapable of consent;]**

**AND**

3. That the Defendant acted knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-125(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Sexual Intercourse Without Consent, No. 5-125(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-503 (2017).

COMMENT: This Instruction should be used with MCJI 5-123, defining consent, or 5-123(a), defining a person who is incapable of consenting to sexual intercourse.

The definition of sexual intercourse in MCJI 5-125(b) should also be provided.

Note the aggravating circumstances for sentencing purposes in MCA § 45-5-503(3)-(5). The jury must find the aggravating circumstances for increased punishment, and the verdict form should contain a separate finding as to the aggravating circumstances. *See* MCJI 1-123; MCA § 46-1-401; *State v. Ghostbear*, 2014 MT 192A, 376 Mont. 500, 338 P.3d 25.

INSTRUCTION NO. **[5-125(b)]**

**[Definition of “Sexual Intercourse”]**

“Sexual intercourse” means penetration of the **[(vulva) (anus) (mouth) of one person by the penis of another person] [(vulva) (anus) of one person by a body member of another person] [(vulva) (anus) of one person by a foreign instrument or object manipulated by another person]** to knowingly or purposely

**[(cause bodily injury to) (humiliate, harass, or degrade) the other party.]**

**OR**

**[arouse or gratify the sexual response or desire of either party].**

Any penetration, however slight, is sufficient.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-125(b) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of Sexual Intercourse, No. 5-125(b), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-2-101(68) (2017).

COMMENT: Use this Instruction if the Defendant is charged with sexual intercourse without consent under MCA § 45-5-503, or aggravated sexual intercourse without consent under MCA § 45-5-508.

INSTRUCTION NO. **[5-125(c)]**

**[Determining Sentence Enhancement Factors—Sexual Intercourse without Consent]**

If you find the defendant guilty of sexual intercourse without consent, as charged inCount \_\_\_, you must then determine whether the State proved beyond a reasonable doubt that **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was less than 16 years old and the Defendant was 4 or more years older than \_\_\_\_\_\_\_\_\_\_\_\_\_] [the Defendant inflicted bodily injury upon anyone in the course of committing sexual intercourse without consent] [\_\_\_\_\_\_\_\_\_\_\_\_ was 12 years of age or younger and the Defendant was 18 years of age or older at the time of the offense].**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-125(c) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No. \_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Determining Sentence Enhancement Factors—Sexual Intercourse Without Consent, No. 5-125(c), 2018 Supp., Source and Comment]**

SOURCE: MCA §§ 45-5-503(3), (4) (2017).

COMMENT: The victim’s name should be inserted in the blanks.

The legislature has provided greater penalties for a Defendant who is more than four years older than a victim under the age of 16; for a Defendant who inflicts bodily injury on anyone in the course of the offense; and for an adult Defendant who has sexual intercourse without consent with a child under the age of 12. MCA § 45-5-503(3)-(4). This instruction should be used when the State seeks to impose the greater penalties found in those statutes. The special verdict form in MCJI 1-123 should also be provided. *See* MCA § 46-1-401 (2017).

Note that the statute contains additional aggravators as well as a mitigator.

INSTRUCTION NO. **[5-129]**

**[Aggravated Sexual Intercourse Without Consent]**

A person who uses force while knowingly having sexual intercourse with another person **[without consent] [who is incapable of consent]** commits the offense of aggravated sexual intercourse without consent.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-129 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Aggravated Sexual Intercourse Without Consent, No. 5-129, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-508 (2017).

COMMENT: This Instruction should be used with the general definition of consent in MCJI 5-123; the Instruction defining a person who is incapable of consent, MCJI 5-123(a), if applicable; the definition of sexual intercourse in MCJI 5-125(b); and the definition of force in MCJI 5-129(b).

INSTRUCTION NO. **[5-129(a)]**

**[Issues in Aggravated Sexual Intercourse Without Consent]**

To convict the Defendant of aggravated sexual intercourse without consent, the State must prove the following elements:

1. That the Defendant had sexual intercourse with \_\_\_\_\_\_\_\_\_\_\_\_\_;

**AND**

2. **[That the act of sexual intercourse was without \_\_\_\_\_\_\_\_\_\_\_\_\_\_’s consent;] [That \_\_\_\_\_\_\_\_\_\_\_\_ was incapable of consent;]**

**AND**

3. That Defendant used force while having sexual intercourse with \_\_\_\_\_\_\_\_\_\_\_\_\_;

**AND**

4. That the Defendant acted knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-129(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Aggravated Sexual Intercourse Without Consent, No. 5-129(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-503(2017).

COMMENT: This Instruction should be used in conjunction with the general definition of consent in MCJI 5-123; the Instruction defining a person incapable of consent, MCJI 5-123(a), if applicable; the definition of sexual intercourse in MCJI 5-125(b); and the definition of force in MCJI 5-129(b).

INSTRUCTION NO. **[5-129(b)]**

**[Definition of “Force”—Aggravated Sexual Intercourse Without Consent]**

“Force” means:

**[the (infliction) (attempted infliction) (threatened infliction) of bodily injury.]**

**OR**

**[the commission of a forcible felony by the Defendant.]**

**OR**

**[the threat of substantial retaliatory action that causes the person to reasonably believe that the Defendant has the ability to execute the threat.]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-129(b) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Force”—Aggravated Sexual Intercourse Without Consent,**

**No. 5-129(b), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-501(2) (2017).

COMMENT: This Instruction should be given if the Defendant is charged with aggravated sexual intercourse without consent under MCA § 45-5-508.

If the type of force alleged is the commission of a forcible felony, the definition of forcible felony in MCJI 2-103 should be given as well.

INSTRUCTION NO. **[5-130]**

**[Strangulation of Partner or Family Member]**

A person commits the offense of strangulation of a partner or family member if the person purposely or knowingly impedes the normal breathing or circulation of the blood of a partner or family member by

**[applying pressure on the throat or neck of the partner or family member.]**

**OR**

**[blocking air flow to the nose and mouth of the partner or family member].**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-130 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Strangulation of Partner or Family Member, No. 5-130, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-215(2017).

COMMENT: MCJI 5-113(b), the definitions of “partner” and “family member,” should be given in conjunction with this Instruction.

INSTRUCTION NO. **[5-130(a)]**

**[Issues in Strangulation of Partner or Family Member]**

To convict the Defendant of strangulation of a partner or family member, the State must prove the following elements:

1. That the Defendant impeded the normal breathing or circulation of \_\_\_\_\_\_\_\_\_\_\_\_\_ by **[applying pressure to (his) (her) throat] [by blocking air flow to (his) (her) nose and mouth]**;

**AND**

2. That \_\_\_\_\_\_\_\_\_\_\_\_\_\_ is a **[partner] [family member]** of the Defendant;

**AND**

3. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-130(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Strangulation of Partner or Family Member, No. 5-130(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-215 (2017).

COMMENT: MCJI 5-113(b), the definition of “partner” or “family member,” should be given in conjunction with this Instruction.

INSTRUCTION NO. **[5-131]**

**[Trafficking of Persons]**

A person commits the offense of trafficking of persons if the person purposely or knowingly

**[(recruits) (transports) (transfers) (harbors) (receives) (provides) (obtains) (isolates) (maintains) (entices) another person (intending) (knowing) that the person will be subjected to (involuntary servitude) (sexual servitude).]**

**OR**

**[benefits (financially) (by receiving anything of value) from participation in a venture that has subjected another person to (involuntary servitude) (sexual servitude).]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-131 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Trafficking of Persons, No. 5-131, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-702 (2017).

COMMENT:

INSTRUCTION NO. **[5-131(a)]**

**[Issues in Trafficking of Persons]**

To convict the Defendant of trafficking of persons, the State must prove the following elements:

**[1. That the Defendant (recruited) (transported) (transferred) (harbored) (received) (provided) (obtained) (isolated) (maintained) (enticed) another person;**

**AND**

**2. That the Defendant did so (intending) (knowing) that the person will be subjected to (involuntary servitude) (sexual servitude);**

**AND**

**3. That the Defendant acted purposely or knowingly.]**

**OR**

**[1. That the Defendant benefitted (financially) (by receiving anything of value) from participation in a venture that has subjected another person to (involuntary servitude) (sexual servitude);**

**AND**

**2. That the Defendant acted purposely or knowingly.]**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-131(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Trafficking in Persons, No. 5-131(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-702 (2017).

COMMENT: If the Defendant is charged with trafficking a person or benefitting from the trafficking of a person while knowing or intending that the person would be subjected to involuntary servitude, MCJI 5-132 defining that offense and the appropriate definitional Instructions should be given as well.

If the Defendant is charged with trafficking a person or benefitting from the trafficking of a person while knowing or intending that the person would be subjected to sexual servitude, MCJI 5-133 defining that offense and the appropriate definitional Instructions should be given as well.

If the Defendant is charged with the aggravating circumstances in MCA §§ 45-5-702(2)(b), or 45-5-706(1), the verdict form should include a separate finding to that effect. *See* MCJI 1-123;

MCA § 46-1-401; *State v. Ghostbear*, 2014 MT 192A, 338 P.3d 25, 376 Mont. 500.

If the Defendant is charged with one of the aggravating circumstances in MCA § 45-5-702(2)(b)(i), the appropriate jury instructions defining the offense at issue (aggravated kidnapping, sexual intercourse without consent, or deliberate homicide) should be given.

If the Defendant is charged with the aggravating circumstance in MCA § 45-5-702(2)(b)(ii), the definition of child in MCJI 2-121 should be given.

INSTRUCTION NO. **[5-132]**

**[Involuntary Servitude]**

A person commits the offense of involuntary servitude if the person purposely or knowingly uses coercion to compel another person to provide labor or services, unless the conduct is otherwise permissible under federal or state law.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-132 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Involuntary Servitude, No. 5-132, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-703 (2017).

COMMENT:

INSTRUCTION NO. **[5-132(a)]**

**[Issues in Involuntary Servitude]**

To convict the Defendant of involuntary servitude, the State must prove the following elements:

1. That the Defendant used coercion to compel \_\_\_\_\_\_\_\_\_ to provide labor or services;

**AND**

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-132(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Involuntary Servitude, No. 5-132(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-7-703 (2017).

COMMENT: MCJI 5-134, defining coercion, and MCJI 5-138, defining labor or services, should be given in conjunction with this Instruction.

The following additional instructions should be given only if applicable:

MCJI 5-136, defining debt bondage

MCJI 5-137, defining identification document

MCJI 5-139, defining serious harm

If the Defendant is charged with the aggravating circumstances in MCA §§ 45-5-703(2)(b), or 45-5-706(1), the verdict form should include a separate finding regarding the appropriate aggravating circumstance. *See* MCJI 1-123; MCA 46-1-401; *State v. Ghostbear*, 2014 MT 192A, 338 P.3d 25, 376 Mont. 500.

If the Defendant is charged with one of the aggravating circumstances in MCA § 45-5-703(2)(b)(i), the appropriate jury instructions defining the offense at issue (aggravated kidnapping, sexual intercourse without consent, or deliberate homicide) should be given.

If the Defendant is charged with the aggravating circumstance in MCA § 45-5-703(2)(b)(ii), the definition of child in MCJI 2-121 should be given.

INSTRUCTION NO. **[5-133]**

**[Sexual Servitude]**

A person commits the offense of sexual servitude if the person purposely or knowingly

**[uses coercion or deception to compel an adult to engage in commercial sexual activity.]**

**OR**

**[(recruits) (transports) (transfers) (harbors) (receives) (provides) (obtains by any means) (isolates) (entices) (maintains) (makes available) a child for the purpose of commercial sexual activity.]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-133 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Involuntary Servitude, No. 5-133, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-704 (2017).

COMMENT:

INSTRUCTION NO. **[5-133(a)]**

**[Issues in Sexual Servitude]**

To convict the Defendant of sexual servitude, the State must prove the following elements:

**[1. That the Defendant used coercion or deception to compel \_\_\_\_\_\_\_\_\_, an adult, to engage in commercial sexual activity;]**

**OR**

**[1. That the Defendant (recruited) (transported) (transferred) (harbored) (received) (provided) (obtained) (isolated) (enticed) (maintained) (made available) a child for the purpose of commercial sexual activity;]**

**AND**

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-133(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Sexual Servitude, No. 5-133(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-7-704 (2017).

COMMENT: MCJI 5-135, defining commercial sexual activity, and MCJI 5-140, defining sexual activity, should be given in conjunction with this Instruction.

If the Defendant is charged with sexual servitude under MCA § 45-5-704(3)(b), MCJI 2-121, defining child, should be given as well.

The following definitions should be given only as applicable:

MCJI 5-134, defining coercion

MCJI 5-136, defining debt bondage

MCJI 5-137 defining identification document

MCJI 5-138, defining labor or services

MCJI 5-139, defining serious harm,

MCJI 5-140, defining sexually explicit performance

If one of the aggravating circumstances in MCA §45-5-706(1) is charged, the verdict form should include a separate finding regarding the appropriate aggravating circumstance. *See* MCJI 1-123; MCA 46-1-401; *State v. Ghostbear*, 2014 MT 192A, 338 P.3d 25, 376 Mont. 500.

INSTRUCTION NO. **[5-134]**

**[Definition of “Coercion”]**

“Coercion” means

**[the use or threat of force against, abduction of, serious harm to, or physical restraint of a person.]**

**OR**

**[the use of a plan, pattern, or statement with intent to cause a person to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of a person.]**

**OR**

**[the abuse or threatened abuse of law or legal process.]**

**OR**

**[controlling or threatening to control a person’s access to any substance defined as a dangerous drug.]**

**OR**

**[the actual or threatened destruction or taking of a person’s identification document or other property.]**

**OR**

**[the use of debt bondage.]**

**OR**

**[the use of a person’s physical or mental impairment when the impairment has a substantial adverse effect on the person’s cognitive or volitional function.]**

**OR**

**[the commission of civil or criminal fraud.]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-134 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Coercion,” No. 5-134, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-701(2) (2017).

COMMENT:

INSTRUCTION NO. **[5-135]**

**[Definitions of “Commercial Sexual Activity”]**

“Commercial sexual activity” means sexual activity for which anything of value is given to, promised to, or received by a person.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-135 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Commercial Sexual Activity”, No. 5-135, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-701(3) (2017).

COMMENT:

INSTRUCTION NO. **[5-136]**

**[Definition of “Debt Bondage”]**

“Debt bondage” means inducing a person to provide:

**[commercial sexual activity in payment toward or satisfaction of a real or purported debt.]**

**OR**

**[labor or services in payment toward or satisfaction of a real or purported debt if (the reasonable value of the labor or services is not applied toward the liquidation of the debt.) (the length of the labor or services is not limited and the nature of the labor or services is not defined.)]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-136 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Debt Bondage,” No. 5-136, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-701(4) (2017).

COMMENT:

INSTRUCTION NO. **[5-137]**

**[Definition of “Identification Document”]**

“Identification document” means **(a passport) (a driver’s license) (an immigration document) (a travel document) (any government-issued identification document, including a document issued by a foreign government).**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-137 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Identification Document,” No. 5-137, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-701(6) (2017).

COMMENT:

INSTRUCTION NO. **[5-138]**

**[Definition of “Labor or Services”]**

“Labor or services” means activity having economic value.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-138 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Labor or Services,” No. 5-138, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-701(7) (2017).

COMMENT:

INSTRUCTION NO. **[5-139]**

**[Definition of “Serious Harm”]**

“Serious harm” means physical or nonphysical harm, including psychological, economic, or reputational harm to a person that would compel a reasonable person of the same background and in the same circumstances to perform or to continue to perform **(labor or services) (sexual activity)** to avoid incurring the harm.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-139 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Serious Harm,” No. 5-139, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-701(8) (2017).

COMMENT:

INSTRUCTION NO. **[5-140]**

**[Definition of “Sexual Activity”]**

“Sexual activity” means any sex act or simulated sex act intended to arouse or gratify the sexual desire of any person.

**[“Sexual activity” includes any sexually explicit performance.]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-140 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Sexual Activity,” No. 5-140, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-701(9) (2017).

COMMENT: If the second sentence is applicable, it should be included and MCJI 5-141, defining sexually explicit performance should also be given.

INSTRUCTION NO. **[5-141]**

**[Definition of “Sexually Explicit Performance”]**

“Sexually explicit performance” means a live, public, private, photographed, recorded, or videotaped act or simulated act intended to arouse or gratify the sexual desire of any person.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-141 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Definition of “Sexually Explicit Performance,” No. 5-141, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-5-701(10) (2017).

COMMENT:

**2018 CUMULATIVE SUPPLEMENT**

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INSTRUCTION NO. **[6-101(a)]**

**[Issues in Criminal Mischief]**

To convict the Defendant of criminal mischief, the State must prove the following elements:

1. That the Defendant **[damaged] [injured] [destroyed] [the property of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [public property]**;

**AND**

2. That the Defendant did so without the consent of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

3. That the Defendant acted knowingly or purposely;

**OR**

1. That the Defendant tampered with **[the property of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [public property]** so as to endanger or interfere with **[persons] [property] [its use]**;

**AND**

2. That the Defendant did so without the consent of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

3. That the Defendant acted knowingly or purposely;

**OR**

1. That the Defendant **[damaged] [destroyed]** property;

**AND**

2. That the Defendant did so with the purpose to defraud an insurer;

**AND**

3. That the Defendant acted knowingly or purposely;

**OR**

1. That the Defendant failed to close a gate previously unopened which he had opened, leading in or out of any enclosed premises;

**AND**

2. That the gate was not located in a city or town;

**AND**

3. That the Defendant acted knowingly or purposely;

**AND**

4. That the Defendant **[caused pecuniary loss in excess of $1,500]** **[(injured) (killed) a commonly domesticated hoofed animal]** **[caused a substantial (interruption) (impairment) of (public communication) (transportation) (supply of water) (gas) (power) (or other public services)]**.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-101(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Issues in Criminal Mischief, No. 6-101(a), 2018 Supp., Source and Comment]**

SOURCE: MCA §§ 45-6-101(1), (3) (2017).

COMMENT: The blanks should be filled in with the name of the victim.

MCA § 45-6-101(1), which defines this offense, does not include any of the facts listed in the fourth element. Rather, those facts are contained within MCA § 45-6-101(3), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include similar facts in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the felony property offense, such as this one.

INSTRUCTION NO. **[6-103]**

**[Arson]**

A person commits the offense of arson if, by means of **[fire] [explosives]**, the person knowingly or purposely:

**[(damages) (destroys) a (structure) (vehicle) (personal property, other than a vehicle, that exceeds $1,500 in value) (crop) (pasture) (forest) (other real property) which is property of another without consent.]**

**OR**

**[(damages) (destroys) a (structure) (vehicle) (crop) (pasture) (forest) (other property) that the person owns or has an interest in, with the purpose of obtaining a pecuniary or other gain through fraud or deception.]**

**OR**

**[places another person in danger of (death) (bodily injury) (including a firefighter responding to or at the scene of a fire or explosion).]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-103 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Arson, No. 6-103, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-103 (2017).

COMMENT: If appropriate, the definition of “property of another” contained in MCA § 45-2-101 (2017) should be used.

The bracketed language of “including a firefighter responding to or at the scene of a fire or explosion” should be included with the other option if appropriate.

INSTRUCTION NO. **[6-103(a)]**

**[Issues in Arson]**

To convict the Defendant of arson, the State must prove the following elements:

1. That the Defendant, by means of **[fire] [explosives]** **[damaged] [destroyed]** a **[structure] [vehicle] [personal property, other than a vehicle, that exceeds $1500 in value]** **[crop, pasture, forest, or other real property]** belonging to **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

2. That the Defendant did so without the consent of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

3. That the Defendant acted knowingly or purposely;

**OR**

1. That the Defendant, by means of **[fire] [explosives]** **[damaged] [destroyed]** a **[structure] [vehicle] [crop] [pasture] [forest] [other property]** that **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **[owns] [has a possessory interest in]**, with the purpose of obtaining a pecuniary interest or other gain through fraud or deception;

**AND**

2. That the Defendant acted knowingly or purposely;

**OR**

1. That the Defendant, by means of **[fire] [explosives]** placed **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a firefighter responding to the scene of a fire or explosion]**, in danger of **[death] [bodily injury]**;

**AND**

2. That the Defendant acted knowingly or purposely.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-103(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Arson, No. 6-103(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-103 (2017).

COMMENT: Insert the name of the owner and/or victim in the appropriate blanks.

The several sets of issues present alternative situations.

INSTRUCTION NO. **[6-104]**

**[Burglary]**

A person commits the offense of burglary if the person knowingly enters or remains unlawfully in an occupied structure **[with the purpose to commit an offense in the occupied structure] [and knowingly or purposely commits any offense in the occupied structure].**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-104 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Burglary, No. 6-104, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-204(1) (2017).

COMMENT: The definition of the terms “enter or remain unlawfully” and

“occupied structure,” which appear in these instructions, should

be given.

INSTRUCTION NO. **[6-104(a)]**

**[Issues in Burglary]**

To convict the Defendant of the charge of burglary, the State must prove the following elements:

1. That the Defendant knowingly unlawfullyentered or remained within an occupied structure;

**AND**

2. That the Defendant **[did so with the purpose to commit the offense of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the occupied structure] [knowingly or purposely committed the offense of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the occupied structure];**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-104(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Burglary, No. 6-104(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-204(1) (2017).

COMMENT: The appropriate offense should be inserted in the blank, and instructions defining the elements of that offense should also be given.

INSTRUCTION NO. **[6-105]**

**[Aggravated Burglary]**

A person commits the offense of aggravated burglary if the person knowingly enters or remains unlawfully within an occupied structure **[with the purpose to commit an offense in the occupied structure] [and knowingly or purposely commits any offense within the occupied structure]**, and **[in effecting entry] [in the course of committing the offense] [in immediate flight after the commission of the offense] [(the person) (another participant in the offense) (is armed with {explosives} {a weapon}] [the person (purposely) (knowingly) (negligently) (inflicts) (attempts to inflict) bodily injury upon anyone].**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-105 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No \_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Aggravated Burglary, No. 6-105, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-204(2) (2017).

COMMENT: A definition of the terms “enter or remain unlawfully” and “occupied structure” should be given with this instruction.

A definition of “negligently,” “bodily injury,” and “weapon” should be given when appropriate.

INSTRUCTION NO. **[6-105(a)]**

**[Issues in Aggravated Burglary]**

To convict the Defendant of the charge of aggravated burglary, the State must prove the following elements:

1. That the Defendant knowingly entered or remained unlawfully in an occupied structure;

**AND**

1. That the Defendant **[did so with the purpose to commit the offense of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the occupied structure] [knowingly or purposely committed the offense of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the occupied structure]**;

**AND**

1. **[That (in effecting entry) (in the course of committing the offense) (in immediate flight after the commission of the offense), (the Defendant) (another participant in the offense) was armed with (explosives) (a weapon)].**

**OR**

1. **[That (in effecting entry) (in the course of committing the offense) (in immediate flight after the commission of the offense), the Defendant (purposely) (knowingly) (negligently) (inflicted) (attempted to inflict) bodily injury on anyone.]**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-105(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Aggravated Burglary, No. 6-105(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-204(2) (2017).

COMMENT: The two issues under subsection (3) are alternatives. Only one should be used. See the note to the previous instruction relating to definitions required.

INSTRUCTION NO. **[6-106]**

**[Theft – By Unauthorized Control]**

A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner, and **[has the purpose of depriving the owner of the property] [purposely or knowingly (uses) (conceals) (abandons) the property in a manner that deprives the owner of the property] [(uses) (conceals) (abandons) the property knowing that such (use) (concealment) (abandonment) probably will deprive the owner of the of the property].**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-106 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Theft – By Unauthorized Control, No. 6-106, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-301(1) (2017).

COMMENT: The statute permits aggregation of amounts involved in theft when determining pecuniary loss. *See* MCA § 45-6-301(9).

INSTRUCTION NO. **[6-106(a)]**

**[Issues in Theft by Unauthorized Control]**

To convict the Defendant of the charge of theft, the State must prove the following elements:

1. That **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** was the owner of the **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** in question;

**AND**

2. That the Defendant purposely or knowingly obtained or exerted unauthorized control over the **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

3. **[That the Defendant had the purpose of depriving \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the property;]**

**OR**

**3. [That the Defendant purposely or knowingly used, concealed, or abandoned the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in such manner as to deprive \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of it;]**

**OR**

**3. [That the Defendant used, concealed, or abandoned the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ knowing that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ would probably be deprived of it;]**

**AND**

4. That the value of the property is **[more than $1,500.00, but less than or equal to $5,000.00] [more than $5,000.00 but less than or equal to $10,000.00] [more than $10,000.00].**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-106(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

**[Issues in Theft by Unauthorized Control, No. 6-106(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-301(1), (7) (2017).

COMMENT: MCA § 45-6-301(1), which defines this offense, does not discuss the value of the property. Rather, those facts are contained within MCA § 45-6-301(7), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include facts such as the value of the property or the victim’s pecuniary loss in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the offense, such as this one. If the offense is charged as a misdemeanor, the fourth item should be deleted.

This section permits aggregation of amounts in determining pecuniary loss.

INSTRUCTION NO. **[6-107(a)]**

**[Issues in Theft by Threat or Deception]**

To convict the Defendant of the charge of theft, the State must prove the following elements:

1. That **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** was the owner of the **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** in question;

**AND**

2. That the Defendant by **[deception] [threat]** purposely or knowingly obtained control over the **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

3. [**That the Defendant had the purpose of depriving the owner of the property;]**

**OR**

1. **[That the Defendant purposely or knowingly used, concealed, or abandoned the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **in such manner as to deprive \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **of it;]**

**OR**

3. **[That the Defendant (used) (concealed) (abandoned) the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **knowing that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **would thereby probably be deprived of it;]**

**AND**

1. That the value of the property is **[more than $1,500.00, but less than or equal to $5,000.00] [more than $5,000.00 but less than or equal to $10,000.00] [more than $10,000.00].**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-107(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Theft by Threat or Deception, No. 6-107(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-301(2), (7) (2017).

COMMENT: MCA § 45-6-301(1), which defines this offense, does not discuss the value of the property. Rather, those facts are contained within MCA § 45-6-301(7), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include facts such as the value of the property or the victim’s pecuniary loss in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the offense, such as this one. If the offense is charged as a misdemeanor, the fourth item should be deleted.

This section permits aggregation of amounts in determining pecuniary loss.

INSTRUCTION NO. **[6-108(a)]**

**[Issues in Theft by Obtaining Control Over Stolen Property]**

To convict the Defendant of the charge of theft, the State must prove the following elements:

1. That the Defendant purposely or knowingly obtained control over **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

2. That the Defendant knew the **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** had been stolen by another;

**AND**

1. **[That the Defendant had the purpose of depriving the owner of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;]**

**OR**

1. **[That the Defendant purposely or knowingly used, concealed, or abandoned the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **in such manner as to deprive the owner of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;]**

**OR**

3. **[That the Defendant (used) (concealed) (abandoned) the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ knowing that the owner would thereby probably be deprived of it;]**

**AND**

4.That the value of the property is **[more than $1,500.00, but less than or equal to $5,000.00] [more than $5,000.00 but less than or equal to $10,000.00] [more than $10,000.00].**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-108(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Theft by Obtaining Control Over Stolen Property, No. 6-108(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-301(3), (7) (2017).

COMMENT: MCA § 45-6-301(1), which defines this offense, does not discuss the value of the property. Rather, those facts are contained within MCA § 45-6-301(7), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include facts such as the value of the property or the victim’s pecuniary loss in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the offense, such as this one. If the offense is charged as a misdemeanor, the fourth item should be deleted.

This section permits aggregation of amounts in determining pecuniary loss.

INSTRUCTION NO. **[6-112(a)]**

**[Issues in Theft - Embezzlement]**

To convict the Defendant of the charge of theft, the State must prove the following elements:

1. That the Defendant, with the purpose to deprive **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, the owner of the property **[obtained or exerted unauthorized control over property of the Defendant’s employer, or over property of the Defendant’s employer which was entrusted to Defendant.]**

**OR**

1. That the Defendant, with the purpose to deprive **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, the owner of the property **[obtained by deception, control over property of the Defendant’s employer or over property of the Defendant’s employer which was entrusted to Defendant.]**

**AND**

2. That the Defendant acted purposely or knowingly.

**AND**

3. The value of the property is **[more than $1500.00, but less than or equal to $5000.00] [more than $5000.00 but less than or equal to $10,000.00] [more than $10,000.00].**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-112(a) (2018)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

**[Issues in Theft – Embezzlement, No. 6-112(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-301(6), (7) (2017).

COMMENT: MCA § 45-6-301(6), which defines this offense, does not discuss the value of the property. Rather, those facts are contained within MCA § 45-6-301(7), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include facts such as the value of the property or the victim’s pecuniary loss in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the offense, such as this one. If the offense is charged as a misdemeanor, the fourth item should be deleted.

This section permits aggregation of amounts in determining pecuniary loss.

INSTRUCTION NO. **[6-115(a)]**

**[Issues in Failure to Return Rented or Leased Personal Property]**

To convict the Defendant of failure to return rented or leased personal property, the State must prove the following elements:

1. That there existed a rental agreement between the lessor and lessee containing clear, boldly printed written notice of the date and time for return of the property and the penalty for failure to return the property;

**AND**

2. That the Defendant failed to return the property within 48 hours of the time provided in the rental agreement for return of the property;

**AND**

3. That the Defendant failed to give notice to and obtain the permission of the lessor for the delay;

**AND**

1. That the Defendant acted purposely or knowingly.

**AND**

1. The value of the property which the Defendant failed to return **[is greater than $1,500 in value, but less than or equal to $5,000] [part of a common scheme] [greater than $5,000].**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-115(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Failure to Return Rented or Leased Personal Property, No. 6-115(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-309(1), (4) (2017).

COMMENT: MCA § 45-6-309(1), which defines this offense, does not discuss the value of the property. Rather, those facts are contained within MCA § 45-6-309(4), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include facts such as the value of the property or the victim’s pecuniary loss in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the offense, such as this one. If the offense is charged as a misdemeanor, the fourth item should be deleted.

This section permits aggregation of amounts in determining pecuniary loss.

INSTRUCTION NO.**[6-116(a)]**

**[Issues in Unlawful Use of a Computer]**

To convict the Defendant of unlawful use of a computer, the state must prove the following elements:

1. **[That the Defendant obtained the use of a computer, computer system, or computer network without consent of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;]**

**OR**

1. **[That the Defendant (altered) (destroyed) (caused \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to alter or destroy) a computer program or computer software without consent of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;]**

**OR**

1. **[That Defendant (obtained the use of) (altered) (destroyed) a computer, computer system, or computer network, or any part thereof as part of a deception, for the purpose of obtaining (money) (property) (computer services) from (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the owner of the computer, computer system, computer network or part thereof) (any other person);]**

**AND**

2. That the Defendant acted knowingly or purposely;

**AND**

3. That the nature of the offense is one involving property exceeding $1,500 in value.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-116(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Issues in Unlawful Use of a Computer, No. 6-116(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-311 (2017).

COMMENT: MCA § 45-6-311(1), which defines this offense, does not discuss the value of the property. Rather, those facts are contained within MCA § 45-6-311(2), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include facts such as the value of the property or the victim’s pecuniary loss in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the offense, such as this one. If the offense is charged as a misdemeanor, the fourth item should be deleted.

This section permits aggregation of amounts in determining pecuniary loss.

INSTRUCTION NO. **[6-117(a)]**

**[Issues in Issuing a Bad Check]**

To convict the Defendant of issuing a bad check, the State must prove the following elements:

1. That the Defendant **[issued] [delivered] [a check] [other order]** upon a **[real depository] [fictitious depository]** for the payment of money,

**AND**

1. The Defendant knew that **[the check] [other order]** would not be paid by the **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

1. The Defendant acted knowingly;

**AND**

1. The **[issuing of bad check(s) was part of a common scheme] [value of any (property) (labor) (services) obtained or attempted to be obtained was (greater than $500 but less than or equal to $1,500) (greater than $1,500 but less than or equal to $5,000) (greater than $5,000)].**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-117(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Issuing a Bad Check, No. 6-117(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-316(1), (3) (2017).

COMMENT: MCA § 45-6-316(1), which defines this offense, does not discuss the value of the property. Rather, those facts are contained within MCA § 45-6-316(3), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include facts such as the value of the property or the victim’s pecuniary loss in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the offense, such as this one. If the offense is charged as a misdemeanor, the fourth item should be deleted.

This section permits aggregation of amounts in determining pecuniary loss.

INSTRUCTION NO. **[6-118]**

**[Deceptive Practices]**

A person commits the offense of deceptive practices when the person purposely or knowingly:

**[causes another, by deception or threat, to execute a document (disposing of property) (by which a pecuniary obligation is incurred);]**

**OR**

**[makes (directs another to make) a false or deceptive statement addressed to the public or any person for the purpose of (promoting) (procuring) the sale of (property) (services);]**

**OR**

**[(makes) (directs another to make) a false or deceptive statement to any person respecting the financial condition of the Defendant for the purpose of procuring a loan or credit]**

**OR**

**accepts a false or deceptive statement regarding a person’s financial condition from a person who is attempting to procure a loan or credit;**

**OR**

**[obtains or attempts to obtain property, labor or services by (using a credit card which was issued to another without the other's consent.)(using a credit card that has been revoked or canceled.) (using a credit card that has been (falsely made) (counterfeited) (altered) in any material respect.)(using the**

**pretended number or description of a fictitious credit card.)(using a credit card which has expired when the credit card clearly indicates the expiration date)]**.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-118 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Deceptive Practices, No. 6-118, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-317 (2017).

COMMENT: This instruction is designed to be used in felony cases. The monetary amount and common scheme elements should be deleted if the offense is a misdemeanor. Other inapplicable bracketed terms should also be deleted. If common scheme is involved, the definition of common scheme in MCA § 45-2-101(8) (2017) should be given.

INSTRUCTION NO. **[6-118(a)]**

**[Issues in Deceptive Practices]**

To convict the Defendant of deceptive practices the State must prove the following elements:

1. **[That the Defendant** **caused \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by deception or threat, to execute a document (disposing of property) (by which a pecuniary obligation is incurred);]**

**OR**

1. **[That the Defendant (made) (directed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_to make) a false or deceptive statement addressed to the public or to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the purpose of (promoting) (procuring) the sale of (property) (services);]**

**OR**

1. **[That the Defendant** **(made) (directed another to make) a false or deceptive statement to any person respecting the financial condition of the Defendant for the purpose of procuring a loan or credit;]**

**OR**

1. **[That the Defendant accepted a false or deceptive statement regarding a person’s financial condition from a person who is attempting to procure a loan or credit;]**

**OR**

1. **[That the Defendant obtained or attempted to obtain property, labor or services by (using a credit card which was issued to \_\_\_\_\_\_\_\_\_\_\_\_\_\_ without his consent) (using a credit card that was revoked or canceled) (using a credit card that was (falsely made) (counterfeited) (altered) in any material respect) (using the pretended number or description of a fictitious credit card) (using a credit card which had expired and the credit card clearly indicated the expiration date)]**;

**AND**

2. The Defendant acted purposely or knowingly;

**AND**

1. The **[deceptive practice was part of a common scheme] [value of any (property) (labor) (services) (obtained) (attempted to be obtained) is (greater than $1,500, but less than or equal to $5,000) (greater than $5,000)]**.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-118(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Issues in Deceptive Practices, No. 6-118(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-317 (2017).

COMMENT: MCA § 45-6-317(1), which defines this offense, does not discuss the value of the property. Rather, those facts are contained within MCA § 45-6-317(2), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include facts such as the value of the property or the victim’s pecuniary loss in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the offense, such as this one. If the offense is charged as a misdemeanor, the fourth item should be deleted.

This section permits aggregation of amounts in determining pecuniary loss.

The definition of common scheme in MCA § 45-2-101 (2017) should be given if applicable.

INSTRUCTION NO. **[6-119]**

**[Forgery]**

A person commits the offense of forgery when the person, with the purpose to defraud, knowingly:

**[Without authority makes or alters a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which was apparently capable of being used to defraud another, so that it appears to have been made (by another) (at another time) (with different provisions) (of different composition).]**

**OR**

**[Issues or delivers a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_which he knows has been made or altered so that it appears to have been made (by another) (at another time) (with different provisions) (of different composition).]**

**OR**

**[Possesses, with the purpose of issuing or delivering a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_which he knows has been made or altered so that it appears to have been made (by another) (at another time) (with different provisions) (of different composition).]**

**OR**

**[Possesses, with knowledge of its character, any plate, die, or other device, apparatus, equipment or article specifically designed for use in counterfeiting or otherwise forging written instruments.]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-119 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Forgery, No. 6-119, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-325 (2017).

COMMENT: Insert an appropriate description of the document or object involved, e.g., check, note, mortgage, etc. Note subsections 2 and 3 of

MCA § 45-6-325 (2017), which relate, respectively, to the meaning of a “purpose to defraud” and “a document or other object capable of being used to defraud.”

INSTRUCTION NO. **[6-119(a)]**

**[Issues in Forgery – Alteration of Document]**

To convict the Defendant of forgery, the State must prove the following elements:

1. **[That the Defendant without authority made or altered a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which was apparently capable of being used to defraud another, so that it appeared to have been made (by another) (at another time) (with different provisions) (of different composition);]**

**OR**

1. **[That the Defendant issued or delivered a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ which he knew had been made or altered so that it appeared to have been made (by another) (at another time) (with different provisions) (of different composition);]**

**AND**

2. That the Defendant did so with the purpose of defrauding **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

3. That the Defendant acted knowingly;

**AND**

1. The **[alteration of the document(s) was part of a common scheme] [value of any (property) (labor) (services) obtained or attempted to be obtained (is greater than $1,500 but is less than or equal to $5,000) (is greater than $5,000)].**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-119(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_Defendant’s Proposed Instruction No\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Issues in Forgery – Alteration of a Document, No. 6-119(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-325(1)(a)-(b), (4) (2017).

COMMENT: The blank in the first issue should contain a description of the appropriate document or object. The blank in the second issue

should contain the name of the intended victim, if known. If

the alleged forger intended to defraud anyone, rather than a

specific individual, the word “someone” should be inserted

in the blank.

MCA § 45-6-325(1)(a) and (b), which define this offense, do not discuss the value of the property, labor or services. Rather, those facts are contained within MCA § 45-6-325(4), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include facts such as the value of the property or the victim’s pecuniary loss in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the offense, such as this one. If the offense is charged as a misdemeanor, the fourth item should be deleted.

If a common scheme is alleged, give the definition of common scheme from MCA § 45-2-101 (2017).

This section permits aggregation of amounts in determining pecuniary loss.

INSTRUCTION NO. **[6-119(b)]**

**[Issues in Forgery – Possession of Altered Document or Counterfeiting Equipment]**

To convict the Defendant of forgery, the State must prove the following elements:

1. That the Defendant possessed a **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, which **(he) (she)** knew had been made or altered so that it appeared to have been made **(by another) (at another time) (with different provisions) (of different composition)**;

**AND**

2. That the Defendant had the purpose to issue or deliver the **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

3. That the Defendant then had the purpose to defraud **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

4. That the Defendant acted knowingly;

**AND**

5. That **[the possession of the altered document(s) was part of a common scheme] [the value of any (property (labor) (services) obtained or attempted to be obtained is (greater than $1,500 but less than or equal to $5,000) (greater than $5,000)]**.

**OR**

1. That the Defendant possessed any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments;

**AND**

2. That the Defendant had knowledge of its character;

**AND**

3. That the Defendant then had the purpose to defraud **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

4. That the Defendant acted knowingly;

**AND**

5. That **[the possession of the plate, die, or other device, apparatus, equipment or article was part of a common scheme] [the value of any (property) (labor) (services) obtained or attempted to be obtained is (greater than $1,500, but less than or equal to $5,000) (greater than $5,000).]**

**OR**

1. That **[the possession of the altered document(s) was part of a common scheme] [value of any (property) (labor) (services) obtained or attempted to be obtained is (greater than $1,500, but less than or equal to $5,000) (greater than $5,000).]**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-119(b) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Issues in Forgery – Possession of Altered Document or Counterfeiting Equipment, No. 6-119(b), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-325(1)(c)-(d), (4) (2017).

COMMENT: The blank in the first and second issues should be completed with a description of the document, the bracketed blank in the third issue should contain the name of the intended victim, if known. If the alleged forger intended to defraud anyone, rather than a specific individual, the word “someone” should be inserted in the blank.

MCA § 45-6-325(1)(c)-(d), which define this offense, do not discuss the value of the property, labor or services. Rather, those facts are contained within MCA § 45-6-325(4), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include facts such as the value of the property or the victim’s pecuniary loss in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the offense, such as this one. If the offense is charged as a misdemeanor, the fourth item should be deleted.

If a common scheme is alleged, give the definition of common scheme from MCA § 45-2-101 (2017).

INSTRUCTION NO. **[6-120(a)]**

**[Issues in Theft of Identity]**

To convict the Defendant of the charge of theft of identity, the State must prove the following elements:

1. That the identifying information in question belonged to **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

1. That the Defendant purposely or knowingly obtained control over the identifying information;

**AND**

1. That the Defendant used the identifying information for the unlawful purpose of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

1. That the Defendant acted without the consent of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

1. That the economic benefit that was gained or attempted to be gained is **[greater than $1,500 but less than or equal to $5,000] [is greater than $5,000]**;

**AND**

**6. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ was a minor.**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-120 (a) (2018 Supp.)

Plaintiff's Proposed Instruct. No.\_\_\_ Defendant's Proposed Instruct. No. \_\_\_\_

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn\_\_\_\_\_ By\_\_\_\_\_

**[Issues in Theft of Identity, No. 6-120(a), 2018 Supp., Source]**

SOURCE: MCA § 45-6-332 (2017).

COMMENT: MCA § 45-6-332(1), which defines this offense, does not discuss the value of the economic benefit or the age of the victim. Rather, those facts are contained within MCA § 45-6-332(2), which sets forth the punishment for the offense. *See* MCA § 46-1-401 (regarding penalty enhancements).

Nonetheless, in *State v. Young*, 206 Mont. 19, 669 P.2d 239 (1983), the Montana Supreme Court held that “value is an element of the crime of theft, and is a fact question” that “must be decided by the jury.” *Accord State v. Furlong*, 213 Mont. 251, 690 P.2d 986 (1984). *See also State v. Daniels*, 2003 MT 30, 314 Mont. 208, 64 P.3d 1045 (“Value is an element of the offense of felony theft, and must be proven to support the charge.”); *State v. Sunday*, 187 Mont. 292, 609 P.2d 1188 (1980) (value is a “fundamental element” of felony theft).

In light of this precedent, the Commission has chosen not to include facts such as the value of the property or the victim’s pecuniary loss in the pattern instructions defining each property offense, but has included those facts as an “element” that the State must prove in order to find the Defendant guilty in the pattern instructions setting forth the issues in the offense, such as this one.

Delete element 5 regarding the value of the economic benefit if not applicable. Delete element 6 if the victim is not alleged to be a minor.

**INSTRUCTION NO. [6-122]**

**[Unauthorized Use of a Motor Vehicle]**

A person commits the offense of unauthorized use of a motor vehicle if the person knowingly operates the **[automobile] [airplane] [motorcycle] [quadricycle] [motorboat] [other motor-propelled vehicle]** of another without the owner’sconsent.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 5-101 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Unauthorized Use of a Motor Vehicle, No. 6-122, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-308(1) (2017).

COMMENT:

**INSTRUCTION NO. [6-122(a)]**

**[Issues in Unauthorized Use of a Motor Vehicle]**

To convict the Defendant of unauthorized use of a motor vehicle, the State must prove the following elements:

1. That the Defendant operated **[an automobile] [an airplane] [a motorcycle] [a quadricycle] [a motorboat] [a motor-propelled vehicle]**;

**AND**

1. That the **[automobile] [airplane] [motorcycle] [quadricycle] [motorboat] [motor-propelled vehicle]** was owned by another;

**AND**

1. That the Defendant did not have the owner’s consent;

**AND**

1. That the Defendant acted knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-122(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Unauthorized Use of a Motor Vehicle, No. 6-122(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-308(1) (2017).

**INSTRUCTION NO. [6-123]**

**[Criminal Destruction of or Tampering with a Communication Device]**

A person commits the offense of criminal destruction of or tampering with a communication device if the person purposely or knowingly destroys or tampers with a **[telephone] [communication device]** to obstruct, prevent, or interfere with [**the report to any law enforcement agency of any actual criminal offense] [the report to any law enforcement agency of any actual bodily injury or property damage]** **[a request made to any governmental agency or to any hospital, doctor, or other medical provider for necessary ambulance or emergency medical assistance]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-122(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Destruction of or Tampering with Communication Device, No. 6-123, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-105 (2017).

**INSTRUCTION NO. [6-123(a)]**

**[Issues in Criminal Destruction of or Tampering with Communication Device]**

To convict the Defendant of criminal destruction of or tampering with a communication device, the State must prove the following elements:

1. That the Defendant destroyed or tampered with a **[telephone] [communication device]**;

**AND**

1. That the Defendant did so to obstruct, prevent or interfere with **[the report to any law enforcement agency of any actual criminal offense] [the report to any law enforcement agency of any actual bodily injury or property damage] [a request made to any governmental agency or to any hospital, doctor, or other medical provider for necessary ambulance or emergency medical assistance];**

**AND**

1. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 6-123(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Destruction of or Tampering with a Communication Device, No. 6-123(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-6-105 (2017).

COMMENT:

**2018 CUMULATIVE SUPPLEMENT**

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**CHAPTER EIGHT – OFFENSES AGAINST PUBLIC ORDER**

**Red indicates the Instruction can be found in the 2018 Cumulative Supplement**

No. Subject

8-101 Carrying Concealed Firearm

8-101(a) Issues in Carrying Concealed Firearm

8-102 Possession of Explosives

8-102(a) Issues in Possession of Explosives

INSTRUCTION NO. **[8-101]**

**[Carrying Concealed Firearm]**

A person commits the offense of carrying a concealed firearm if the person **[(purposely) (knowingly)]** carries or bears upon **[his] [her]** person a firearmwholly or partially covered by his or her clothing or wearing apparel.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 8-101 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No. \_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

**[Carrying Concealed Firearm, No. 8-101, 2018 Supp., Source and Comment]**

SOURCE: MCA §§ 45-8-315, -316 (2017).

COMMENT: This instruction is a combination of the two statutes that define the crime.

INSTRUCTION NO. **[8-101(a)]**

**[Issues In Carrying a Concealed Firearm]**

To convict the Defendant of Carrying a Concealed Firearm, the State must prove the following elements:

1. That the Defendant carried or bore upon [his] [her] person a firearm;

**AND**

2. That the firearm was wholly or partially covered by the Defendant’s clothing or wearing apparel;

**[AND**

**3. That the Defendant acted purposely or knowingly.]**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 8-101(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No. \_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

**[Issues in Carrying Concealed Weapon, No. 8-101(a), 2018 Supp., Source and Comment]**

SOURCE: MCA §§ 45-8-315, -316 (2017).

COMMENT: The statutes defining the offense do not specify a mental state element. However, under MCA § 45-2-104, “A person may be guilty of an offense without having, as to each element of the offense, one of the mental states of knowingly, negligently, or purposely only if the offense is punishable by a fine not exceeding $500 or the statue defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.” Although the basic misdemeanor penalty for a violation of these statutes set forth in MCA § 45-8-316(1) falls within the exception in MCA § 45-2-104, the enhanced penalty set forth in MCA § 45-8-316(2) does not. In the latter situation, one of the mental states of purposely or knowingly must be alleged and proven, *see* MCA § 45-2-104 (2017), and the bracketed language should be used.

**2018 CUMULATIVE SUPPLEMENT**

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**CHAPTER NINE – DANGEROUS DRUGS**

**Red indicates the Instruction can be found in the 2018 Cumulative Supplement**

No. Subject

9-101 Criminal Distribution of Dangerous Drugs

9-101(a) Issues in Criminal Distribution of Dangerous Drugs

9-101(b) Determining Age of Defendant and Recipient—Criminal Distribution of Dangerous Drugs

9-102 Criminal Possession of Dangerous Drugs

9-102(a) Issues in Criminal Possession of Dangerous Drugs

9-103 Determining Amount of Marijuana or Hashish—Criminal Distribution, Criminal Possession, and Criminal Possession with Intent to Distribute

9-103(a) Superseded

9-104 Criminal Possession with the Intent to Distribute

9-104(a) Issues in Criminal Possession with the Intent to Distribute

9-105 Possession of Dangerous Drugs--Actual or Constructive

9-106 Fraudulently Obtaining Dangerous Drugs

9-106(a) Issues in Fraudulently Obtaining Dangerous Drugs

9-107 Criminal Possession of Precursors to Dangerous Drugs

9-107(a) Issues Criminal Possession of Precursors to Dangerous Drugs

9-108 Possession of Precursors to Dangerous Drugs –Actual or Constructive

9-109 Criminal Distribution of Dangerous Drugs on or near School Property

9-109(a) Issues in Criminal Distribution of Dangerous Drugs on or near School Property

9-109(b) Affirmative Defense – Criminal Distribution of Dangerous Drugs on or near School Property

9-110 Criminal Production or Manufacture of Dangerous Drugs

9-110(a) Issues in Criminal Production or Manufacture of Dangerous Drugs

9-111 Determining Amount of Marijuana

9-111(a) Superseded

9-112 Criminal Distribution of Imitation Dangerous Drugs

9-112(a) Issues in Criminal Distribution of Imitation Dangerous Drugs

9-112(b) Determining Age of Recipient—Criminal Distribution of Imitation Dangerous Drugs

9-113 Criminal Possession of Imitation Dangerous Drugs with Purpose to Distribute

9-113(a) Issues in Criminal Possession of Imitation Dangerous Drugs with Purpose to Distribute

9-113(b) Possession of Imitation Dangerous Drugs – Actual or Constructive

9-114 Entrapment

9-115 Operation of Unlawful Clandestine Laboratory

9-115(a) Issues in Operation of Unlawful Clandestine Laboratory

INSTRUCTION NO. **[9-101]**

**[Criminal Distribution of Dangerous Drugs]**

A person commits the offense of criminal distribution of dangerous drugs if the person purposely or knowingly **[sells] [barters] [exchanges] [gives away]** **[offers to (sell) (barter) (exchange) (give away)]** the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-101 (2018 Supp.)

Plaintiff’s Proposed Instruction No.\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Distribution of Dangerous Drugs, No. 9-101, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-101 (2017).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101(2017) in the blank.

The statute defining this offense does not specify a mental state element. However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission has inserted the mental states of purposely or knowingly.

INSTRUCTION NO. **[9-101(a)]**

**[Issues in Criminal Distribution of Dangerous Drugs]**

To convict the Defendant of criminal distribution of dangerous drugs, the State must prove the following elements:

1. That the Defendant **[sold] [bartered] [exchanged] [gave away] [offered to (sell) (barter) (exchange) (give away)]** the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;]

**AND**

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that each of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that either of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-101(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No. \_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Issues in Criminal Distribution of Dangerous Drugs, No. 9-101(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-101(2) (2017).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101(2017) in the blank.

The term “distribution” is defined by the internal requirements to sell, barter, exchange, or give away the dangerous drug. *State v. Rathbun*, 317 Mont. 66 (2003).

The legislature has provided lesser penalties for those convicted

of distributing small amounts of marijuana or hashish.

MCA § 45-9-101(2). If the State seeks the greater penalty for distribution of marijuana or hashish set forth in MCA § 45-9-101(4), also use MCJI 9-103 and the special verdict form in MCJI 1-123. *See* MCA § 46-1-401 (2017).

The legislature has also provided greater penalties for adults who distribute dangerous drugs to minors. MCA § 45-9-101(5). If the State seeks the greater penalty for distribution set forth in that statute, also use MCJI 9-101(b) and the special verdict form in MCJI 1-123. *See* MCA § 46-1-401 (2017).

INSTRUCTION NO. **[9-101(b)]**

**[Determining Age of Defendant and Recipient—Criminal Distribution of Dangerous Drugs]**

If you find the defendant guilty of criminal distribution of the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as charged inCount \_\_\_, you must then determine whether the State proved beyond a reasonable doubt that the Defendant was an adult at the time of distribution and that the person to whom the Defendant distributed the dangerous drug was a minor.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-101(b) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No. \_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Determining Age of Defendant and Recipient—Criminal Distribution of Dangerous Drugs, No. 9-101(b), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-101(5) (2017).

COMMENT: The legislature has provided greater penalties for adults

convicted of distributing dangerous drugs to minors. MCA

§ 45-9-101(5). This instruction should be used when the State seeks to impose the greater penalties found in that statute. The special verdict form in MCJI 1-123 should also be provided.

*See* MCA § 46-1-401 (2017).

Insert the type of dangerous drug from MCA § 50-32-101(2017) in the blank.

INSTRUCTION NO. **[9-102]**

**[Criminal Possession of Dangerous Drugs]**

A person commits the offense of criminal possession of dangerous drugs if the person purposely or knowingly possesses the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-102 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Possession of Dangerous Drugs, No. 9-102, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-102 (2017).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2017) in the blank.

The statute defining this offense do not specify a mental state element. However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission has inserted the mental states of purposely or knowingly. *But see* MCA § 45-2-104(2) (indicating that first offense possession of small amounts of marijuana or hashish is punishable by a fine not to exceed $500).

INSTRUCTION NO. **[9-102(a)]**

**[Issues in Criminal Possession of Dangerous Drugs]**

To convict the Defendant of criminal possession of dangerous drugs, the State must prove the following elements:

1. That the Defendant possessed the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_;

**AND**

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-102(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Possession of Dangerous Drugs, No. 9-102(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-102(1) (2017).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2017) in the blank.

The legislature has provided lesser penalties for those

convicted of possessing small amounts of marijuana or hashish. MCA § 45-9-102(2). If the State seeks the greater penalty for possession of marijuana or hashish set forth in MCA § 45-9-102(3), also use MCJI 9-103 and the special verdict form in MCJI 1-123. *See* MCA § 46-1-401.

INSTRUCTION NO. **[9-103]**

**[Determining Amount of Marijuana or Hashish—Criminal Distribution, Criminal Possession, Criminal Possession with Intent to Distribute]**

If you find the defendant guilty of **[criminal distribution of] [criminal possession of ] [criminal possession with intent to distribute]** the dangerous drug, **[marijuana or its derivates] [hashish]** as charged inCount \_\_\_, you must then determine whether the State proved beyond a reasonable doubt that **[the aggregate weight of the marijuana or its derivatives exceeded 60 grams] [the amount of hashish exceeded 1 gram]**.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-101(b) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No. \_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Determining Amount of Marijuana or Hashish—Criminal Distribution, Criminal Possession, Criminal Possession with Intent to Distribute, No. 9-103, 2018 Supp., Source and Comment]**

SOURCE: MCA §§ 45-9-101(2), (4); -102(2)-(3); -103(2)-(3) (2017).

COMMENT: The legislature has provided lesser penalties for those convicted of distributing, possessing, and possessing with the intent to distribute small amounts of marijuana or hashish. MCA §§ 45-9-101(2),

-102(2), -103(2). This instruction should be used when the State seeks to impose the greater penalties found in MCA §§ 45-9-101(4), -102(3), or -103(3). The special verdict form in MCJI 1-123 should also be provided. *See* MCA § 46-1-401.

INSTRUCTION NO. **[9-104]**

**[Criminal Possession with Intent to Distribute]**

A person commits the offense of criminal possession with intent to distribute if the person purposely or knowingly possesses with intent to distribute the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-104 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Possession with Intent to Distribute, No. 9-104, 2018 Supp., Source and Comment]**

SOURCE MCA § 45-9-103 (2017).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101(2017) in the blank.

The term “distribute” is defined by the internal requirements of MCA § 45-9-101 (2005), to sell, barter, exchange or give away. *State v. Rathbun,* 317 Mont. 66 (2003).

The statute defining this offense do not specify a mental state element. However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission has inserted the mental states of purposely or knowingly.

INSTRUCTION NO. **[9-104(a)]**

**[Issues in Criminal Possession with the Intent to Distribute]**

To convict the Defendant of criminal possession with intent to distribute, the State must prove the following elements:

1. That the Defendant possessed with intent to distribute the dangerous drug, **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**AND**

2. The Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-104(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Possession with the Intent to Distribute, No. 9-104(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-103 (2017).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101(2017) in the blank.

The term “distribute” is defined by the internal requirements of MCA § 45-9-101 (2007), to sell, barter, exchange, or give away. *State v. Rathbun,* 317 Mont. 66 (2003).

The legislature has provided lesser penalties for those convicted of possessing with intent to distribute small amounts of marijuana or hashish. MCA § 45-9-103(2). If the State seeks the greater penalty for possession with intent to distribute marijuana or hashish set forth in MCA § 45-9-103(3), also use MCJI 9-103 and the special verdict form in MCJI 1-123. *See* MCA § 46-1-401 (2017).

INSTRUCTION NO. **[9-106]**

**[Fraudulently Obtaining Dangerous Drugs]**

A person commits the offense of fraudulently obtaining dangerous drugs if the person purposely or knowingly obtains or attempts to obtain the dangerous drug \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by

**[fraud, deceit, misrepresentation, or subterfuge.]**

**[falsely assuming the title of or representing himself to be a (manufacturer) (wholesaler) (practitioner) (pharmacist) (owner of a pharmacy) (person authorized to possess dangerous drugs).]**

**[the use of a (forged) (altered) (fictitious) prescription.]**

**[the use of a false (name) (address) on a prescription.]**

**[the concealment of a material fact.]**

**[failing to disclose to a practitioner that the person has received the same or a similar dangerous drug or prescription for a dangerous drug from another source within the prior 30 days.]**

**[communicating (false) (incomplete) information to a practitioner with the intent to procure the (administration of) (a prescription for) a dangerous drug.]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-106 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_ By\_\_\_\_\_

**[Fraudulently Obtaining Dangerous Drugs, No. 9-106, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-104 (2017).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101(2017) in the blank.

The statute defining this offense does not specify a mental state element except with respect to those criminal mechanisms set forth in MCA §§ 45-9-104(6), (7). However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission inserted the mental states of purposely or knowingly with respect to all of the mechanisms for committing this crime. As such, the Commission deleted the duplicative references to those mental states in subsections (6) and (7).

INSTRUCTION NO. **[9-106(a)]**

**[Issues in Fraudulently Obtaining Dangerous Drugs]**

To convict the Defendant of fraudulently obtaining dangerous drugs, the State must prove the following elements:

1. That the Defendant obtained or attempted to obtain the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

**2. That the Defendant did so by fraud, deceit, misrepresentation, or subterfuge;  
 OR**

**2. That the Defendant did so by falsely assuming the title of or representing himself to be a (manufacturer) (wholesaler) (practitioner) (pharmacist) (owner of a pharmacy) (person authorized to possess dangerous drugs);**

**OR**

**2. That the Defendant did so by the use of a (forged) (altered) (fictitious) prescription;**

**OR**

**2. That the Defendant did so by the use of a false (name) (address) on a prescription;**

**OR**

**2. That the Defendant did so by the concealment of a material fact;**

**OR**

**2. That the Defendant did so by failing to disclose to a practitioner that the person has received the same or a similar dangerous drug or prescription for a dangerous drug from another source within the prior 30 days;]**

**OR**

**2. That the Defendant did so by communicating (false) (incomplete) information to a practitioner with the intent to procure the (administration of) (a prescription for) a dangerous drug;**

**AND**

3. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-106(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Fraudulently Obtaining Dangerous Drugs, No. 9-106(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-104 (2017).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101(2017) in the blank.

The statute defining this offense does not specify a mental state element except with respect to those criminal mechanisms set forth in MCA §§ 45-9-104(6), (7). However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission inserted the mental states of purposely or knowingly with respect to all of the mechanisms for committing this crime. As such, the Commission deleted the duplicative references to those mental states in subsections (6) and (7).

INSTRUCTION NO. **[9-110]**

**[Criminal Production or Manufacture of Dangerous Drugs]**

A person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely **[produces] [manufactures] [prepares] [cultivates] [compounds] [processes]** the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-110 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Production or Manufacture of Dangerous Drugs, No. 9-110, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-110 (4) (2017).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2017) in the blank.

The legislature has provided lesser penalties for those convicted of producing or manufacturing distribute small amounts of marijuana or tetrahydrocannabinol. MCA § 45-9-110(3). If the State seeks the greater penalty for producing or manufacturing marijuana or tetrahydrocannabinol set forth in MCA § 45-9-110(2), also use

MCJI 9-110(b) and the special verdict form in MCJI 1-123.

*See* MCA § 46-1-401 (2017).

INSTRUCTION NO. **[9-110(a)]**

**[Issues in Criminal Production or Manufacture of Dangerous Drugs]**

To convict the Defendant of criminal production or manufacture of dangerous drugs, the State must prove the following elements:

1. That the Defendant **[produced] [manufactured] [prepared] [cultivated] [compounded]** **[processed]** the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_;

**AND**

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that each of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that either of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-110(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Production or Manufacture of Dangerous Drugs, No. 9-110(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-110(1) (2017).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2017) in the blank.

The legislature has provided lesser penalties for those convicted of producing or manufacturing distribute small amounts of marijuana or tetrahydrocannabinol. MCA § 45-9-110(3). If the State seeks the greater penalty set forth in MCA § 45-9-110(2), also use MCJI

9-110(b) and the special verdict form in MCJI 1-123. *See* MCA

§ 46-1-401 (2017).

INSTRUCTION NO. **[9-111]**

**[Determining Amount of Marijuana or Tetrahydrocannabinol—Criminal Production or Manufacture of Dangerous Drugs]**

If you find the defendant guilty of criminal production or manufacture of the dangerous drug, **[marijuana] [tetrahydrocannabinol]**,as charged inCount \_\_\_, you must then determine whether the State proved beyond a reasonable doubt that **[the total weight is more than a pound] [the number of plants is more than 30].**

“Weight” means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-111 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No. \_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Determining Amount of Marijuana or Tetrahydrocannabinol—Criminal Production or Manufacture, No. 9-111, 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-110(3) (2017).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2017) in the blank.

The legislature has provided lesser sentences for those convicted of producing or manufacturing small amounts of marijuana or tetrahydrocannabinol. MCA § 45-9-110(3). This instruction should be used when the State seeks to impose the greater penalties found in that statute. The special verdict form in MCJI 1-123 should also be provided. *See* MCA § 46-1-401 (2017).

INSTRUCTION NO. **[9-112]**

**[Criminal Distribution of Imitation Dangerous Drugs]**

A person commits the offense of criminal sale of imitation dangerous drugs if the person knowingly or purposely **[sells] [barters] [exchanges] [gives away] [offers to (sell) (barter) (exchange) (give away)]** the imitation dangerous drug, **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.

“Imitation dangerous drug” means a substance that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a dangerous drug.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-112 (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Distribution of Imitation Dangerous Drugs, No. 9-112, 2018 Supp., Source and Comment]**

SOURCE: MCA §§ 45-9-111, -112 (2017).

COMMENT: Insert the type of imitation dangerous drug from MCA § 50-32-101 (2017) in the blank.

INSTRUCTION NO. **[9-112(a)]**

**[Issues in Criminal Distribution of Imitation Dangerous Drugs]**

To convict the Defendant of Criminal Distribution of Imitation Dangerous Drugs, the State must prove the following elements:

1. That the Defendant **[sold] [bartered] [exchanged] [gave away] [offered to (sell) (barter) (exchange) (give away)]** the imitation dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_;

**AND**

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-112(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Distribution of Imitation Dangerous Drugs, No. 9-112(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-112 (2017).

COMMENT: Insert the type of imitation dangerous drug from MCA § 50-32-101 (2017) in the blank.

The legislature has provided greater sentences for those

convicted of distributing imitation dangerous drugs to minors.

MCA § 45-9-112(3). If the State seeks to impose the greater penalties found in that statute, MCJI 9-112(b) and the special verdict form in MCJI 1-123 should also be provided. *See* MCA § 46-1-401 (2017).

INSTRUCTION NO. **[9-112(b)]**

**[Determining Age of Recipient—Criminal Distribution of Imitation Dangerous Drugs]**

If you find the defendant guilty of criminal distribution of the imitation dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as charged inCount \_\_\_, you must then determine whether the State proved beyond a reasonable doubt that the person to whom the Defendant distributed the dangerous drug was under the age of 18.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-112(b) (2018 Supp.)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No. \_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_By\_\_\_\_\_

**[Determining Age of Recipient—Criminal Distribution of Imitation Dangerous Drugs, No. 9-112(b), 2018 Supp., Source and Comment]**

SOURCE: MCA § 45-9-112(3) (2017).

COMMENT: Insert the type of imitation dangerous drug from MCA § 50-32-101 (2017) in the blank.

The legislature has provided greater sentences for those convicted of distributing imitation dangerous drugs to minors. *See* MCA

§ 45-9-112(3). This instruction should be used when the State seeks to impose the greater penalties found in that statute. The special verdict form in MCJI 1-123 should also be provided. *See* MCA

§ 46-1-401 (2017).

**2018 CUMULATIVE SUPPLEMENT**

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INSTRUCTION NO. **[10-107]**

**[Operation of Vehicle by Person Under Influence of Delta-9-Tetrahydrocannabinal]**

A person commits the offense of operating a

**[noncommercial vehicle while under the influence of delta-9-tetrahydrocannabinal if (he) (she) (drives) (is in actual physical control of) a noncommercial vehicle upon the ways of this state open to the public while the person’s delta-9-tetrahydrocannabinal level, excluding metabolites, as shown by an analysis of the person’s blood, is 5 ng/ml or more.]**

**OR**

**[commercial motor vehicle while under the influence of delta-9-tetrahydrocannabinal if (he) (she) (drives) (is in actual physical control of) a commercial vehicle upon the ways of this state open to the public while the person’s delta-9-tetrahydrocannabinal level, excluding metabolites, as shown by an analysis of the person’s blood, is 5 ng/ml or more.]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 10-107 (2018 Supp.)

Plaintiff’s Proposed Instruction No. Defendant’s Proposed Instruction No.

Given as Instruction No. Refused Withdrawn By

**[Operation of Vehicle by Person Under the Influence of Delta-9-Tetrahydrocannabinal**, **No. 10-107, 2018 Supp., Source and Comment]**

SOURCE: MCA § 61-8-411(1)(a)-(b) (2017).

COMMENT: The statute defining this offense provides that it is an absolute liability offense thereby negating the necessity of proving a particular mental state.

INSTRUCTION NO. **[10-107(a)]**

**[Issues in Operation of Vehicle by Person Under the Influence of Delta-9-Tetrahydrocannabinal]**

To convict the Defendant of the offense of operating a **[noncommercial] [commercial motor]** vehicle while under the influence of delta-9-tetrahydrocannabinol, the state must prove the following elements:

**[1. The Defendant was (driving) (in actual physical control of) a noncommercial vehicle;**

**AND**

**2. The vehicle was upon the ways of this state open to the public;**

**AND**

**3. An analysis of the Defendant’s blood shows (his) (her) delta-9-tetrahydrocannabinol level, excluding metabolites, was 5 ng/ml or more at the time.]**

**OR**

**[1. The Defendant was (driving) (in actual physical control of) a commercial motor vehicle;**

**AND**

**2. The vehicle was upon the ways of this state open to the public;**

**AND**

**3. An analysis of the Defendant’s blood shows (his) (her) delta-9-tetrahydrocannabinol level, excluding metabolites, was 5 ng/ml or more at the time.]**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 10-107(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. Defendant’s Proposed Instruction No.

Given as Instruction No. Refused Withdrawn By

**[Issues in Operation of Vehicle by Person Under the Influence of Delta-9-Tetrahydrocannabinal**, **No. 10-107(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 61-8-411(1) (2017).

COMMENT: The statute defining this offense provides that it is an absolute liability offense thereby negating the necessity of proving a particular mental state.

MCJI 10-101 defining the ways of the state open to the public should be given in conjunction with this instruction.

INSTRUCTION NO. **[10-108]**

**[Aggravated Driving Under the Influence of Alcohol]**

A person commits the offense of aggravated driving under the influence of alcohol if, while under the influence of alcohol, **(he) (she)** **(drives) (is in actual physical control)** of a vehicle upon the ways of this state open to the public and

**[the Defendant’s alcohol concentration, as shown by analysis of (his) (her) blood or breath, was 0.16 or more.]**

**OR**

**[the Defendant was under the order of a court or the Department of Justice to equip any motor vehicle the person operates with an approved ignition interlock device.]**

**OR**

**[the Defendant’s driver’s license or privilege to drive had been suspended, canceled, or revoked as a result of a prior violation of MCA § (61-8-401, driving under the influence of alcohol or drugs) (61-8-402, the implied consent law) (61-8-406, operation of a noncommercial vehicle with an alcohol concentration of 0.08 or more) (61-8-411, operation a vehicle while under the influence of delta-9-tetrahydrocannabinol).]**

**OR**

**[the Defendant refused to provide a breath sample as required in 61-8-402 and the Defendant’s driver’s license or privilege to drive previously was suspended, canceled, or revoked for failing to provide a breath sample within 10 years of the commission of the present offense.]**

**OR**

**[the Defendant has one (prior conviction) (pending charge) for a violation of MCA § (45-5-106, vehicular homicide while under the influence) (45-5-205, negligent vehicular assault) (61-8-401, driving under the influence of alcohol or drugs) (61-8-406, operation of a noncommercial vehicle with alcohol concentration of 0.08 or more) (61-8-411, operation of a vehicle by person under the influence of delta-9-tetrahydrocannabinol) (61-8-465, aggravated driving under the influence) within 10 years of the commission of the present offense.]**

**OR**

**[the Defendant has (two or more prior convictions) (two or more pending charges) (a combination of two or more prior convictions and pending charges) for violating MCA § (45-5-106, vehicular homicide while under the influence) (45-5-205, negligent vehicular assault) (61-8-401, driving under the influence of alcohol or drugs) (61-8-406, operation of a noncommercial vehicle by person with alcohol concentration of 0.08 or more) (46-8-411, operation of a vehicle by person under the influence of delta-9-tetrahydrocannabinol).]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 10-108 (2018 Supp.)

Plaintiff’s Proposed Instruction No. Defendant’s Proposed Instruction No.

Given as Instruction No. Refused Withdrawn By

**[Aggravated Driving Under the Influence of Alcohol, No. 10-108, 2018 Supp., Source and Comment]**

SOURCE: MCA § 61-8-465 (2017).

COMMENT: The statute defining this offense provides that it is an absolute liability offense thereby negating the necessity of proving a particular mental state.

INSTRUCTION NO. **[10-108(a)]**

**[Issues In Aggravated Driving While Under the Influence of Alcohol]**

To convict the Defendant of the offense of aggravated driving while under the influence of alcohol, the State must prove the following elements:

1. That the Defendant was **[driving] [in actual physical control of]** a vehicle;

**AND**

2. That the vehicle was upon the ways of this state open to the public;

**AND**

3. That the Defendant was under the influence of \_\_\_\_\_\_\_\_\_\_\_ at the time;

**AND**

**[4. That the Defendant’s alcohol concentration, as shown by analysis of (his) (her) blood or breath, was 0.16 or more.]**

**OR**

**[4. That the Defendant was under the order of a court or the Department of Justice to equip any motor vehicle the person operates with an approved ignition interlock device.]**

**OR**

**[4. That the Defendant’s driver’s license or privilege to drive had been suspended, canceled, or revoked as a result of a prior violation of MCA § (61-8-401, driving under the influence of alcohol or drugs) (61-8-402, the implied consent law) (61-8-406, operation of a nonmotor vehicle with alcohol concentration of 0.08 or more) (61-8-411, operation of a vehicle by a person under the influence of delta-9-tetrahydocannabinol).]**

**OR**

**[4. That the Defendant refused to provide a breath sample as required in 61-8-402, the implied consent law;**

**AND**

**5. That the Defendant’s driver’s license or privilege to drive previously was suspended, canceled, or revoked for failing to provide a breath sample within 10 years of the commission of the present offense.]**

**OR**

**[4. That the Defendant has one (prior conviction) (pending charge) for a violation of MCA § (45-5-106, vehicular homicide while under the influence) (45-5-205, negligent vehicular assault) (61-8-401, driving under the influence of alcohol or drugs) (61-8-406, operation of a noncommercial vehicle with alcohol concentration of 0.08 or more) (46-8-411, operation of a vehicle by person under the influence of delta-9-tetrahydrocannabinol) (61-8-465, aggravated driving under the influence) within 10 years of the commission of the present offense.]**

**OR**

**[4. That the Defendant has (two or more prior convictions) (two or more pending charges) (a combination of two or more prior convictions and pending charges) for violating MCA § (45-5-106, vehicular homicide while under the influence) (45-5-205, negligent vehicular assault) (61-8-401, driving under the influence of alcohol or drugs) (61-8-406, operation of a noncommercial vehicle with alcohol concentration of 0.08 or more) (61-8-411, operation of a vehicle by person under the influence of delta-9-tetrahydrocannabinol).]**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 10-108(a) (2018 Supp.)

Plaintiff’s Proposed Instruction No. Defendant’s Proposed Instruction No.

Given as Instruction No. Refused Withdrawn By

**[Issues in Aggravated Driving Under the Influence of Alcohol, No. 10-102(a), 2018 Supp., Source and Comment]**

SOURCE: MCA § 61-8-465 (2017).

COMMENT: This instruction is designed to be utilized in a case in which alcohol is the substance involved. The language in element number 2 relative to where the vehicle was operated will have to be modified if any other intoxicating substance was used.

**[MITIGATE DELIBERATE HOMICIDE AS A LESSER INCLUDED OFFENSE SPECIAL VERDICT]**

MONTANA \_\_\_\_\_\_\_ JUDICIAL DISTRICT COURT, \_\_\_\_\_\_ COUNTY

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

)

STATE OF MONTANA, )

) Cause No.

Plaintiff, )

)

vs. ) **V E R D I C T**

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)

Defendant. )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We the jury, duly empaneled and sworn to try the issues in the above-entitled cause, enter the following unanimous verdict:

1. Did the State prove beyond a reasonable doubt that the Defendant caused the death of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, and, that when the Defendant did so, **[he]** **[she]** acted purposely or knowingly?

YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered No, you need go no further as your verdict is Not Guilty.

If you answered Yes, please proceed to question 2.

2. Was the Defendant acting under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse?

YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered No, your verdict is Guilty as to the offense of deliberate homicide, and Not Guilty as to the offense of mitigated deliberate homicide.

If you answered Yes, your verdict is Guilty as to the offense of mitigated deliberate homicide, and Not Guilty as to the offense of deliberate homicide.

Dated this \_\_\_\_\_ day of \_\_\_\_, 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FOREPERSON

**[Mitigated Deliberate Homicide as a Lesser Included Offense Special Verdict Form]**

SOURCE: MCA § 45-5-103(3) (2017)

COMMENT:*See State v. MacGregor*, 2013 MT 297A, 372 Mont. 142, 311 P.3d 428; *Demontiney v. Mont. Twelfth Judicial Dist. Ct.*, 2002 MT 161, 310 Mont. 406, 51 P.3d 476; *State v. Scarborough*, 2000 MT 301, 302 Mont. 350, 14 P.3d 1202.

This special verdict form should be used ONLY if the defendant raises the issue of mitigation and in conjunction with MCJI 5-102(b). It should not be used if the State charges mitigated deliberate homicide directly.