

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**  
455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report Summary**

TO: Members of the Judicial Council

FROM: Task Force on Criminal Jury Instructions  
Hon. Carol A. Corrigan, Chair  
Hon. James D. Ward, Vice-Chair  
Robin Seeley, Attorney, 415-865-7710  
robin.seeley@jud.ca.gov

DATE: August 26, 2005

SUBJECT: Judicial Council Jury Instructions: Approve the Criminal  
Instructions Prepared by the Task Force on Criminal Jury  
Instructions (Action Required)

Issue Statement

The Task Force on Criminal Jury Instructions has completed its work on the Judicial Council criminal jury instructions. The instructions would be effective January 1, 2006. The instructions, approximately 700 in number, must be approved by the Judicial Council before they can be published.

Recommendation

The Task Force on Criminal Jury Instructions recommends that the Judicial Council;

Effective January 1, 2006, approve the criminal jury instructions prepared by the task force;

The table of contents for the proposed jury instructions is attached at pages 17–64. The proposed criminal jury instructions are not included with this report, but are posted at: [www2.courtinfo.ca.gov/crimjuryinst/](http://www2.courtinfo.ca.gov/crimjuryinst/).<sup>1</sup>

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<sup>1</sup> A draft hard copy of the instructions was distributed to all council members in May 2005. The version that is posted has been revised as a result of review by the Rules and Projects Committee and the copyediting process. The instructions have also been renumbered in accordance with the attached table of contents.

### Rationale for Recommendation

The Task Force on Jury Instructions was appointed in 1997, following a recommendation of the Blue Ribbon Commission on Jury System Improvement, and comprised a Criminal Subcommittee and a Civil Subcommittee. Following council approval of the civil jury instructions in July 2003, the task force's Civil Subcommittee became the Advisory Committee on Civil Jury Instructions and the task force became the Task Force on Criminal Jury Instructions. The mission of the task force is to draft comprehensive, legally accurate jury instructions that are readily understood by the average juror. The Task Force on Criminal Jury Instructions has completed work on approximately 700 jury instructions and is submitting these now for council approval.

These instructions were drafted and edited by the task force and circulated for public comment. An official publisher, LexisNexis Matthew Bender, has been selected and is preparing to publish print and electronic versions of the criminal jury instructions once council approval has been obtained.

### Alternative Actions Considered

No alternative action was considered because no alternative existed that would fulfill the council's charge to the task force.

### Comments From Interested Parties

All of the criminal jury instructions have been circulated for public comment. Hundreds of comments were received and evaluated, and numerous changes were made to the instructions based on the comments.

### Implementation Requirements and Costs

The implementation costs will be minimal. Under a publication agreement, the official publisher, LexisNexis Matthew Bender, will make copies of the instructions available to all judicial officers free of charge. The instructions will be offered in print and electronic formats. Additionally, LexisNexis will provide training on a computer program that automates the drafting of jury instructions to court employees at no cost. As is currently the case with the civil jury instructions, the Judicial Council will retain royalties from the sales of the official publisher's jury instructions. The royalties are allocated to the Trial Court Improvement Fund.

There will be some intangible costs associated with the learning curve as the legal community makes the transition to using the new instructions. To ease this transition, the AOC Education Division/Center for Judicial Education and Research will offer education programs to familiarize judges with the instructions. The task force has already participated in bar association continuing legal

education seminars, and staff will continue efforts to familiarize the bar with the new instructions.

Attachments

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**Report**

TO: Members of the Judicial Council

FROM: Task Force on Criminal Jury Instructions  
Hon. Carol A. Corrigan, Chair  
Hon. James D. Ward, Vice-Chair  
Robin Seeley, Attorney, 415-865-7710  
robin.seeley@jud.ca.gov

DATE: August 26, 2005

SUBJECT: Judicial Council Jury Instructions: Approve the Criminal Instructions Prepared by the Task Force on Criminal Jury Instructions (Action Required)

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Issue Statement

The Task Force on Criminal Jury Instructions, has completed its work on the Judicial Council criminal jury instructions. The instructions must be approved by the Judicial Council before they can be published. The instructions would be effective January 1, 2006.

Background

In 1996 the Blue Ribbon Commission on Jury System Improvement reported that jury instructions could be made more useful to the jury if the following recommendations were adopted: (1) jurors should be given basic substantive instructions before the trial begins, and (2) jury instructions should be redrafted in more understandable language. The latter recommendation derived from the commission's conclusion that "jury instructions as presently given in California and elsewhere are, on occasion, simply impenetrable to the ordinary juror."

In light of the commission's view that jurors could be accurately instructed on the law in language that was more easily understood than the language in use at that time, the Judicial Council created the Task Force on Jury Instructions. Chief Justice Ronald M. George identified the following two principal goals underlying the creation of more intelligible instructions: (1) making jurors' experiences more meaningful and rewarding and (2) providing clear instructions that would improve the quality of justice by ensuring that jurors understood and applied the law correctly in their deliberations.

The Task Force on Jury Instructions was appointed in 1997. Its charge was to draft comprehensive, legally accurate jury instructions that can be readily understood by the average juror. Following council approval of the new civil jury instructions in July 2003, the Civil Subcommittee of the original task force became the Advisory Committee on Civil Jury Instructions, and the Criminal Subcommittee became the Task Force on Criminal Jury Instructions. That task force has completed work on approximately 700 criminal jury instructions. The task force has drafted and edited these instructions and circulated them for public comment. The official publisher for the civil jury instructions, LexisNexis Matthew Bender, will publish the criminal jury instructions following approval by the Judicial Council.

### *History of the Task Force on Jury Instructions*

In the 1940s, judges of the Los Angeles Superior Court began drafting pattern instructions known as BAJI (*Book of Approved Jury Instructions*) and CALJIC (*California Jury Instructions Criminal*). Over time, BAJI and CALJIC became well accepted. However, these instructions have been criticized for being difficult for jurors to understand.

In the early 1990s, the council appointed the Blue Ribbon Commission on Jury System Improvement. Among other things, the commission recommended that a task force be created to draft plain-English jury instructions that accurately state the law. The Judicial Council, in response to this recommendation, created the Task Force on Jury Instructions in 1997. Associate Justice Carol A. Corrigan of the First Appellate District was appointed chair of the task force and Associate Justice James D. Ward of the Fourth Appellate District was appointed vice-chair. The task force was divided into two subcommittees, criminal and civil. Justice Corrigan has led the Criminal Subcommittee, and Justice Ward directed the Civil Subcommittee. Both committees included appellate justices, trial judges, attorneys from various sections of the bar, laypeople, and academics. At present, the Criminal Subcommittee, now called the Task Force on Criminal Jury Instructions, has 15 members.

The council approved the Judicial Council civil jury instructions on July 16, 2003, to be effective September 1, 2003. Since that date, the Judicial Council has approved several proposals by the Advisory Committee on Civil Jury Instructions to update the civil jury instructions.<sup>2</sup>

### *Plain-English Initiative*

The movement toward plain English in jury instructions has been national in scope. Studies have shown that the courts have failed to effectively communicate the law to jurors, who are average citizens with educational levels that sometimes are several steps below those of judges and

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<sup>2</sup>Rule 6.59 of the California Rules of Court, effective July 1, 2005, provides for an Advisory Committee on Criminal Jury Instructions to regularly review the case law and statutes affecting the criminal jury instructions. Committee members will be appointed effective November 1, 2005, as part of the regular procedures for appointing new advisory committee members.

lawyers.<sup>3</sup> In particular, these studies note problems with comprehension of the legal jargon that frequently appears in pattern jury instructions.

A study in Washington, D.C., showed that many jurors had a limited understanding of terms that are familiar to lawyers.<sup>4</sup> For example, more than half the people in the study could not define *speculate*. About a quarter selected the wrong definitions for *burden of proof*, *impeach*, *admissible evidence*, and *inference*. More than half thought *preponderance of the evidence* meant a slow, careful pondering of the evidence. Importantly, psycholinguistic studies also have demonstrated that comprehension improves when relatively common terms are used to define legal concepts.<sup>5</sup>

While the law is complex, there are other reasons jury instructions are not written as clearly as possible. One philosophy holds that in order to be legally accurate, jury instructions must mirror the language of statutes and appellate court opinions, even at the risk of confusing jurors.

However, statutes and opinions are not written with jurors in mind. When appellate courts write opinions, they write for an audience of lawyers, not jurors. Similarly, legislation is directed, at least initially, to an audience of legislators. Thus, jury instructions that use the language from these sources often become complex and ponderous and contain words with special meanings.<sup>6</sup>

The problem is exacerbated by the fact that contemporary juries are required to address increasingly complex matters. Tests of jury instructions have found that the more complex the subject matter, the greater the need for simplicity in the language used to explain the subject. Additionally, for many California residents, English is a second language. There is a greater need for clarity today than ever before.

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<sup>3</sup> Schwarzer, *Communicating With Juries: Problems and Remedies* (1981) 69 Cal.L.Rev. 731; Charrow and Charrow, *Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions* (1979) 79 Colum.L.Rev. 1306; and Tiersma, *Reforming the Language of Jury Instructions* (1993) 22 Hofstra L.Rev. 37.

<sup>4</sup> *Id.*, Schwarzer, p. 741.

<sup>5</sup> Tiersma, *supra fn. 3*, at pp. 42-43.

<sup>6</sup> Courts have noted the need to explain statutory provisions to jurors on occasion:

[A] jury instruction that clarifies the application of statutory language in a particular context does not “add to the words of a statute.” . . . It is a court’s duty and responsibility to determine the meaning and scope of statutory language that is ambiguous. “An instruction in the language of a statute is proper only if the jury would have no difficulty in understanding the statute without guidance from the court. It is not proper if reasonable men might differ as to the construction of the statute, for it would delegate to the jury the function of statutory interpretation that belongs to the court.”

(*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003–1004, citations omitted.)

### *Drafting procedure*

Staff attorneys in the Administrative Office of the Courts' Office of the General Counsel prepared the initial drafts of the new criminal jury instructions. In preparing the drafts, the attorneys researched California law, consulted appropriate secondary sources, and reviewed plain-English jury instructions prepared by other states.

Staff submitted first drafts to a working group of the original task force's Criminal Subcommittee for further editing. The working group then submitted that product to the subcommittee for final editing. When necessary, the subcommittee relayed comments back to staff or to a working group for further refinement of the instructions.

Once this drafting was completed, the subcommittee sent batches of instructions out for public comment through mailings and postings on the judicial branch's public Web site. Hard copies of the instructions also were sent to anyone who requested them. All judges in the state were informed of the releases and invited to request hard copies and submit comments. Additionally, criminal practitioner organizations were notified prior to each release.

Many helpful suggestions arrived in the hundreds of public comments, and the subcommittee revised the instructions in light of the suggestions. The AOC's editorial staff monitored the process in order to make technical corrections and maintain a consistent style.

### *Drafting concepts*

The members of the task force carefully considered, and sometimes extensively debated, many issues affecting the writing of the instructions. Their decisions on the most significant of those issues are discussed and explained below. In some areas, the Criminal Subcommittee found uncertainty in the law. The task force did not view itself as a law revision committee and therefore did its best to state the law that the Legislature and the courts have created.

### *Drafting techniques*

To guide its drafting efforts, the task force reviewed the literature on jury instructions and considered the recommendations for improving instructional clarity and comprehensibility. Throughout the process, the Criminal Subcommittee followed a style manual containing rules of composition that had been derived from law review articles by linguists analyzing the problem of jury instruction comprehensibility. When drafting the instructions, the task force applied many of the specific techniques suggested by the literature,<sup>7</sup> including the following:

- Avoid using nominalizations (verb forms made to function as nouns).
- Use "modal" verbs (*must*, *may*) to clarify the jury's task.
- Avoid redundancy and unnecessary words.

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<sup>7</sup> See, e.g., Lind and Partridge, Federal Judicial Center, *Pattern Criminal Jury Instructions* (1987), Appendix A, "Suggestions for Improving Juror Understanding of Instructions"; Schwarzer, Charrow and Charrow, and Tiersma, *supra*, fn. 3.)

- Use the active voice.
- Use short sentences.
- Keep the subject close to the verb; move interrupting phrases to the beginning or end of the sentence.
- Avoid omitting relative pronouns and auxiliary verbs.
- Avoid double negatives.
- Be concrete rather than abstract.
- Avoid instructing the jurors about things they do not need to know.
- Adopt a structure that is logical and easy to follow.

The central drafting rule was to strive for plain English while accurately stating the law. To that end, the Criminal Subcommittee did not just quote statutes and cases, it translated complicated legal terms into their plain English equivalents.

*Examples of plain-English writing*

**CALJIC 2.21.1:**

Innocent misrecollection is not uncommon.

**Judicial Council criminal jury instruction:**

People sometimes honestly forget things or make mistakes about what they remember.

**CALJIC 2.21.2:**

A witness who is willfully false in one material aspect of his or her testimony is to be distrusted in others. You may reject the whole testimony of a witness who willfully has testified falsely as to a material point, unless, from all the evidence, you believe the probability of truth favors his or her testimony in other particulars.

**Judicial Council criminal jury instruction:**

If you decide that a witness deliberately lied about something important, you should consider not believing anything that witness says. Or, if you think the witness lied about some things, but told the truth about others, you may simply accept the part that you think is true and ignore the rest.

**CALJIC 2.00:**



Evidence is either direct or circumstantial. Direct evidence is evidence that directly proves a fact. It is evidence which by itself, if found to be true, establishes that fact. Circumstantial evidence is evidence that, if found to be true, proves a fact from which an inference of the existence of another fact may be drawn. An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

**Judicial Council criminal jury instruction:**

Facts may be proved by direct or indirect evidence. Direct evidence proves a fact by itself. For example, if a witness testifies he saw it raining outside before he came into the courthouse, that testimony is direct evidence that it was raining. Indirect evidence is also called circumstantial evidence. Circumstantial evidence proves a fact based on a reasonable conclusion drawn from one or more other facts. For example, if a witness testifies he saw someone come inside wearing a raincoat covered with drops of water, that testimony is circumstantial evidence because it supports a conclusion that it was raining outside.

**CALJIC 2.90:**

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in the case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to a verdict of not guilty. This presumption places upon the people the burden of proving him guilty beyond a reasonable doubt. Reasonable doubt is defined as follows, it is not a mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction of the truth of the charge.

## **Judicial Council criminal jury instruction:**

A defendant in a criminal case is presumed to be innocent. This presumption requires that the people prove each element of a crime beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt, because everything in life is open to some possible or imaginary doubt. In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence. Unless the evidence proves the defendant guilty beyond a reasonable doubt, he is entitled to an acquittal and you must find him not guilty.

### *Style*

In addition to adhering to principles of plain English, the task force made certain stylistic decisions to make the instructions more straightforward. The more significant decisions are described below.

### *Tone*

The task force's mandate was to produce instructions that are accurate and comprehensible to jurors. In setting a tone, the task force attempted to balance the need for clarity and plain English with the appropriate formality for jury instructions.

### *Legal terminology*

Where definitions had to be used, they were generally incorporated into the body of the main instruction, rather than set out as separate instructions. Where possible, the Criminal Subcommittee refrained from using legal terms; instead, the subcommittee incorporated the definitions of such terms into the language of the instructions. It also did not use the terms "general intent" and "specific intent" in describing the requisite mental state for crimes. Instead, the instructions provide explanations of the mental state without using these potentially confusing legal labels.

### *Scope of content*

To help focus the jury on the central issues, the Criminal Subcommittee also combined multiple instructions and sought to arrange concepts in a logical order, thereby avoiding the scattering of legal concepts.

### *Numbering*

The numbering system for the instructions does not include decimal points. The instructions are listed in the order in which they are likely to be given, so serious crimes come before lesser included offenses. Listed elements in the instructions are numbered so that the jury more clearly understands what needs to be proved.

### *Designations*

The instructions refer to the judge in the first person (“I” statements), thereby avoiding confusing references to “the court.”

### *Notes*

The first item to appear in the notes (under “Instructional Duty”) is information about any sua sponte instructional duties, as well as any other information about when to give optional provisions of the instruction. The notes also alert users to special issues and provide cross-references to other relevant instructions. The task force believed this information would be useful to judges and practitioners and would also help prevent instructional error.

The next section (“Authority”) cites and quotes the case law and statutory authority on which the Criminal Subcommittee relied for the instructional language. The “Authority” section also provides references to the Witkin series of practice manuals as appropriate. Generally, the subcommittee tried to provide substantial authority to support the instructions. The subcommittee occasionally included a “Commentary” section that explains specific drafting choices or addresses other issues.

### *Scope of coverage*

The Criminal Subcommittee drafted approximately 700 instructions. The instructions include all of the topics currently covered by CALJIC. Additionally, the subcommittee widened the coverage of these topics and added instructions that also cover topics not found in CALJIC.

### *Status of CALJIC*

The Administrative Office of the Courts has established a transition arrangement with the Superior Court of Los Angeles County whereby the court will stop maintaining CALJIC when the Judicial Council has published the criminal instructions. The publisher of the CALJIC volumes (West Group) may continue publishing CALJIC.

An official publisher for the Judicial Council jury instructions was deemed desirable to ensure both the accuracy of the instructions and their publication in appropriate print and electronic formats. After several publishers responded to a request for proposals, LexisNexis Matthew Bender was selected to be that official publisher. In addition to hard-copy and electronic versions of the instructions, the official publisher will offer the most advanced and user-friendly computer application available, using the HotDocs platform. The application will (1) allow users to conveniently edit and format the instructions; (2) include features such as a linked table of contents, a search function, an editing function, an option for inputting global information or changes, printing options, and storage options; and (3) be suitable for common operating systems and word-processing programs. The publisher will provide the instructions and the computer program to all California bench officers at no cost.

### Comments From Interested Parties

The first set of criminal instructions was released for public comment in June 2000. This release stimulated public critiques and enabled the drafters to refine particular instructions as well as

make global choices about format and approach. There were five subsequent releases, culminating with the sixth and final release in January 2005.

The Criminal Subcommittee received hundreds of comments on the instructions and made revisions based on many of the recommendations. In general, the comments were positive. For example, in response to the June 2000 public release, Justice Ming W. Chin wrote: “You rewrote the instructions to enable the average juror to understand them easily . . . . I think you succeeded.”

A few comments were generally unfavorable. For example, in response to the June 2000 release, one judge reported: “These instructions avoid legalese, but they “dumb down” the justice process.”

Most commentators offered constructive feedback on how the instructions could be written to more accurately state the law.

#### *Controversial issues*

In general, members of the criminal defense bar wanted more references to reasonable doubt, and members of district attorneys offices wanted fewer. On this issue and others, the Criminal Subcommittee sought to strike a fair balance between the two camps.

In response to the first release in June 2000, the California District Attorneys Association expressed its disapproval of the term “prosecutor” in the instructions. The subcommittee subsequently changed the term to “the People.” After the subcommittee implemented this change, members of the criminal defense bar disapproved. The subcommittee carefully considered their concerns, but noted that Penal Code section 684 expressly states that “[a] criminal action is prosecuted in the name of the people of the State of California . . . .” “The subcommittee therefore retained “the People.”

Sometimes the subcommittee received recurring comments from specific groups in response to every public release. For example, the California District Attorneys Association repeatedly commented about the following introductory language to the elements: “In order to prove that the defendant is guilty of this crime, the People must prove that:” Their concern was that this language suggested that only evidence introduced during the People’s case-in-chief could be used to convict the defendant. The subcommittee carefully considered this comment, but concluded that any change to the language could be construed as relieving the People of their burden of proving every element of a crime, so the subcommittee did not change this language.

Other groups expressed opposition to the entire project. These commentators preferred to use the CALJIC instructions because they have already been tested in the appellate courts.

### RUPRO Review of Instructions

In April 2005, all council members were sent a complete set of the instructions, along with a draft council report. RUPRO met on May 24, 2005 to discuss approximately half the instructions and met again June 30, 2005 to review the remaining instructions and decide whether to recommend that the Judicial Council approve the instructions at the August 26, 2005 meeting.

The RUPRO members carefully reviewed the instructions. Each series of instructions was assigned to two RUPRO members. Justice Corrigan and the staff attorney assigned to the task force were present at both meetings to respond to questions from members and to keep a record of suggested modifications to the instructions. RUPRO members had substantive as well as stylistic suggestions. The major changes made as a result of RUPRO's review are summarized below.

#### Instruction 359, Corpus Delicti: *Independent Evidence of a Charged Crime*:

Changed “Unless you conclude that other evidence shows someone committed the charged crime, you may not rely on any out-of-court statement[s] by the defendant to convict (him/her)” to “Unless you conclude that other evidence shows someone committed the charged crime [or a lesser included offense], you may not rely on any out-of-court statement[s] by the defendant to convict (him/her) [of that crime or lesser offense]” to allow for the possibility that the court will instruct on lesser included offenses.

#### Instruction 505, *Justifiable Homicide: Self-Defense or Defense of Another*:

Changed “The defendant must have believed there was imminent danger of violence to (himself/herself/ [or] someone else)” to “The defendant must have believed there was imminent danger of great bodily injury to (himself/herself/ [or] someone else)” to reflect that a mere fear of violence would not justify homicide.

#### Instruction 511, and other identically worded instructions:

Changed “an ordinary person of average disposition” to “a person of average disposition” because the word “ordinary” is not helpful and may even be misleading.

#### Instructions 590 and 591, *Gross Vehicular Manslaughter While Intoxicated* **and** *Vehicular Manslaughter While Intoxicated – Ordinary Negligence*:

Changed first element to include the optional language allowing for “driving while having a blood alcohol level of 0.08 or higher” for accuracy.

Instruction 727 and 728, *Special Circumstances: Lying in Wait*:

Added the definition of deliberation and premeditation rather than referring to another instruction for that language: “The defendant acted *deliberately* if (he/she) carefully weighed the considerations for and against (his/her) choice and, knowing the consequences, decided to kill. The defendant acted with *premeditation* if (he/she) decided to kill before committing the act that caused death” to avoid the possibility of instructional error by omission.

Instruction 860 and similarly worded assault instructions:

Broke down the first element of Alternative 1B into two parts for clarity as follows:

- [1A. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and
- 1B. The force used was likely to produce great bodily injury;]

Instruction 1000 and other similarly worded instructions:

Changed “public official” to “public office” to clarify that it must be the defendant who purports to use official authority.

Instruction 1036 and other similarly worded sex crimes:

The term “participated in” will be used consistently when a vulnerable victim is involved, and otherwise the term “committed” will be used, which tracks the statutory language.

Instruction 1141 and other similarly worded instructions:

Changed “Matter is not obscene if . . .” to “Matter is not considered obscene under the law” for clarity.

Instruction 1202, *Kidnapping for Ransom, Reward, Extortion*:

Added “[It is not necessary that the person be moved for any distance.]” to clarify that there is no asportation requirement for this type of kidnapping when the defendant is charged with other counts of kidnapping to prevent juror confusion.

Instruction 1400, 1401 and 736, *Criminal Street Gang Crimes*:

Added “[The crimes, if any, that establish a pattern of criminal gang activity, need not be gang-related.]” for clarity.

Instruction 1401, *Felony Committed for Benefit of Criminal Street Gang*

Added: “[You must also decide whether the crime[s] in Count[s] \_\_\_\_\_ (was/were) committed on the grounds of, or within 1,000 feet of a (public/private) (elementary/ [or] vocational/ [or] junior high/ [or] middle school/ [or] high) school open to or being used by minors for classes or school-related programs at the time.]” and “[The People need not prove that the defendant is an active or current member of the alleged criminal street gang.]”

Instruction 1402, *Gang Crime Enhancement*:

Added: “. . . and you find that the defendant committed (that/those) crime[s] for the benefit of, *at the direction of, or in association with a criminal street gang with the intent to promote, further, or assist in any criminal conduct by gang members,* you must then decide . . .” to better track the language of the statute. New language is in italics.

Instruction 1403, *Limited Purpose of Evidence of Gang Activity*:

Changed “[The defendant acted with the intent and knowledge that are required to prove the gang-related (crime[s]/ [and] enhancement[s]) charged” to “[The defendant acted with the intent, purpose, and knowledge that are required to prove the gang-related (crime[s]/ [and] enhancement[s]/ [and special circumstance allegations) charged” for clarity.

Instruction 1700, *Burglary*:

Changed the second element not to refer to felonies as the intended offenses, since theft may be a misdemeanor.

Instruction 3163, *Domestic Violence with Great Bodily Injury*:

Changed “dated” and “dating” to “dating relationship” and added a definition of “dating relationship” for clarity and accuracy and added “The person who was injured does not have to be a person with whom the defendant had a relationship” to cover situations like the one in *People v. Truong* (2001) 90 Cal.App.4th 887.

#### Implementation Requirements and Costs

Implementation costs will be minimal. Under the publication agreement, the official publisher will make copies of the instructions available to all judicial officers free of charge. The instructions will be offered in print and electronic format. Additionally, a computer program that automates the drafting of jury instructions will be available at no cost to the courts. The official publisher will also provide training on the use of this program to the courts at no cost. Under Government Code, section 77209(i), all royalties received from the official publisher for the publication of the Judicial Council jury instructions will be deposited in the Trial Court Improvement Fund and used for the improvement of the jury system. There will be some intangible costs associated with the learning curve as the legal community makes the transition to using the new instructions. To ease this transition, the AOC Education Division/Center for Judicial Education and Research will modify its existing education programs to familiarize judges with the instructions. The Civil Subcommittee (now the Advisory Committee on Civil Jury Instructions) has already participated in bar association continuing legal education seminars, and efforts to familiarize the bar with the new criminal jury instructions will continue.

#### Recommendation

The Task Force on Criminal Jury Instructions recommends that the Judicial Council:

Effective January 1, 2006, approve the criminal jury instructions prepared by the task force as the official Judicial Council criminal jury instructions.

The table of contents for the proposed jury instructions is attached at pages 17 to 64.  
Attachments



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|                              |  | 1016             | Oral Cop. in Concert   |
|                              |  | 1017             | Oral Cop. of An Intoxicated Person                           |
|                              |  | 1018             | Oral Cop. of An Unconscious Person                           |
|                              |  | 1019             | Oral Cop. of a Disabled Person                               |



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|                              |  | 1020             | Oral Cop. of a Disabled Person in a Mental Hospital       |
|                              |  | 1021             | Oral Cop. by Fraud: Elements                              |
|                              |  | 1022             | Oral Copulation While in Custody                          |
|                              |  | <b>1023–1029</b> | <b>Reserved</b>   |
|                              | <b>(III) Sodomy</b>  | 1030             | Sodomy by Force, Fear, or Threats: Elements               |
|                              |  | 1031             | Sodomy in Concert   |
|                              |  | 1032             | Sodomy: Intoxicated Person                                |
|                              |  | 1033             | Sodomy: Unconscious Person                                |
|                              |  | 1034             | Sodomy: Disabled Person                                   |
|                              |  | 1035             | Sodomy: Disabled Person in Hospital                       |
|                              |  | 1036             | Sodomy: by Fraud  |
|                              |  | 1037             | Sodomy: While in Custody                                  |
|                              |  | <b>1038–1044</b> | <b>Reserved</b>   |
|                              | <b>(IV) Sexual Penetration</b>                                 | 1045             | Sexual Penetration by Force, Fear, or Threats             |
|                              |  | 1046             | Sexual Penetration in Concert                             |
|                              |  | 1047             | Sexual Penetration of Intoxicated Person                  |
| <b>Sex Offenses (cont'd)</b> |  | 1048             | Sexual Penetration of Unconscious Person                  |
|                              |  | 1049             | Sexual Penetration of Disabled Person                     |
|                              |  | 1050             | Sexual Penetration of Disabled Person in Hospital         |
|                              |  | 1051             | Sexual Penetration by Fraud                               |
|                              |  | <b>1052–1059</b> | <b>Reserved</b>   |
|                              | <b>(V) Lewd and Lascivious Act</b>                             | 1060             | Lewd or Lascivious Act: Dependant Adult                   |
|                              |  | <b>1061–1069</b> | <b>Reserved</b>   |
|                              | <b>B. Against Minors Only: (I) Unlawful Sexual Intercourse</b> | 1070             | Unlawful Sex. Intercourse—Defendant 21 or older           |
|                              |  | 1071             | Unlawful Sex. Intercourse—Minor More Than 3 Years Younger |

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|                              |                                    | 1072             | Misdemeanor Unlawful Sexual Intercourse: Minor Within Three Years of Defendant's Age |
|                              |                                    | <b>1073–1079</b> | <b>Reserved</b>  |
|                              | <b>(II) Oral Copulation</b>        | 1080             | Oral Copulation With Person Under 14   |
|                              |                                    | 1081             | Oral Copulation With Minor-Defendant: 21 or Older                                    |
|                              |                                    | 1082             | Oral Copulation With Person Under 18   |
|                              |                                    | <b>1083–1089</b> | <b>Reserved</b>  |
|                              | <b>(III) Sodomy</b>                | 1090             | Sodomy With Person Under 14  |
|                              |                                    | 1091             | Sodomy With Minor: Defendant 21 or Older   |
|                              |                                    | 1092             | Sodomy With Person Under 18  |
|                              |                                    | <b>1093–1099</b> | <b>Reserved</b>  |
|                              | <b>(IV) Sexual Penetration</b>     | 1100             | Sexual Penetration With Person Under 14  |
| <b>Sex Offenses (cont'd)</b> |                                    | 1101             | Sexual Penetration With Minor: Defendant 21 or Older                                 |
|                              |                                    | 1102             | Sexual Penetration With Person Under 18  |
|                              |                                    | <b>1103–1109</b> | <b>Reserved</b>  |
|                              | <b>(V) Lewd and Lascivious Act</b> | 1110             | Lewd or Lascivious Act: Child Under 14   |
|                              |                                    | 1111             | Lewd or Lascivious Act: by Force or Fear   |
|                              |                                    | 1112             | Lewd or Lascivious Act: Child 14 or 15 Years   |
|                              |                                    | <b>1113–1119</b> | <b>Reserved</b>  |
|                              | <b>(Vi) Other Offenses</b>         | 1120             | Continuous Sexual Abuse  |
|                              |                                    | 1121             | Annoying or Molesting a Child in a Dwelling  |

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|                              |   | 1122             | Annoying or Molesting a Child                               |
|                              |   | 1123             | Aggravated Sexual Assault of Child Under 14                 |
|                              |   | <b>1124–1139</b> | <b>Reserved</b>   |
|                              | <b>C. Other Sex-Related Offenses: (I) Obscene or Harmful Matter</b> | 1140             | Showing or Sending Harmful Matter to Seduce Minor           |
|                              |   | 1141             | Distributing Obscene Matter Showing Sexual Conduct by Minor |
|                              |   | 1142             | Distributing or Intending to Distribute Obscene Matter      |
|                              |   | 1143             | Obscene Live Conduct  |
|                              |   | <b>1144–1149</b> | <b>Reserved</b>   |
|                              | <b>(II) Pimping, Pandering, Prostitution</b>                        | 1150             | Pimping   |
|                              |   | 1151             | Pandering   |
|                              |   | 1152             | Child Procurement   |
| <b>Sex Offenses (cont'd)</b> |   | 1153             | Prostitution: Engaging in Act                               |
|                              |   | 1154             | Prostitution: Soliciting Another                            |
|                              |   | 1155             | Prostitution: Agreeing to Engage in Act                     |
|                              |   | 1156             | Loitering: for Prostitution                                 |
|                              |   | <b>1157–1159</b> | <b>Reserved</b>   |
|                              | <b>(III) Conduct in Public</b>                                      | 1160             | Indecent Exposure   |
|                              |   | 1161             | Lewd Conduct in Public                                      |
|                              |   | 1162             | Soliciting Lewd Conduct in Public                           |
|                              |   | <b>1163–1169</b> | <b>Reserved</b>   |
|                              | <b>(IV) Failure to Register</b>                                     | 1170             | Failure to Register as Sex Offender                         |
|                              |   | <b>1171–1179</b> | <b>Reserved</b>   |
|                              | <b>(V) Other Offenses</b>   | 1180             | Incest With a Minor   |
|                              |   | 1181             | Sexual Abuse of Animal                                      |

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|                            |                                      | <b>1182–1189</b> | <b>Reserved</b>  |
|                            | <b>D. Evidence</b>                   | 1190             | Other Evidence Not Required to Support Testimony in Sex Offense Case |
|                            |                                      | 1191             | Evidence of Uncharged Sex Offense                                    |
|                            |                                      | 1192             | Testimony on Rape Trauma Syndrome                                    |
|                            |                                      | 1193             | Testimony on Child Sexual Abuse Accommodation Syndrome               |
|                            |                                      | 1194             | Consent: Prior Sexual Intercourse                                    |
|                            |                                      | <b>1195–1199</b> | <b>Reserved</b>  |
| <b>8. Kidnapping</b>       | <b>A. Kidnapping: (I) Aggravated</b> | 1200             | Kidnapping: for Child Molestation                                    |
|                            |                                      | 1201             | Kidnapping: Person Incapable of Consent                              |
|                            |                                      | 1202             | Kidnapping: for Ransom, Reward, or Extortion                         |
| <b>Kidnapping (cont'd)</b> |                                      | 1203             | Kidnapping: for Robbery, Rape, or Other Sex Offenses                 |
|                            |                                      | 1204             | Kidnapping: During Carjacking  |
|                            |                                      | <b>1205–1214</b> | <b>Reserved</b>  |
|                            | <b>(II) Simple Kidnapping</b>        | 1215             | Kidnapping   |
|                            |                                      | <b>1216–1224</b> | <b>Reserved</b>  |
|                            | <b>B. Defenses</b>                   | 1225             | Defense to Kidnapping: Protecting Child From Imminent Harm           |
|                            |                                      | 1226             | Defense to Kidnapping: Citizen's Arrest                              |
|                            |                                      | <b>1227–1239</b> | <b>Reserved</b>  |
|                            | <b>C. False Imprisonment</b>         | 1240             | Felony False Imprisonment  |
|                            |                                      | 1241             | False Imprisonment: Hostage  |
|                            |                                      | 1242             | Misdemeanor False Imprisonment                                       |
|                            |                                      | <b>1243–1249</b> | <b>Reserved</b>  |
|                            | <b>D. Child Abduction</b>            | 1250             | Child Abduction: No Right to Custody                                 |

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|  |   | 1251             | Child Abduction: by Depriving Right to Custody or Visitation                 |
|  |   | 1252             | Defense to Child Abduction: Protection From Immediate Injury                 |
|  |   | <b>1253–1299</b> | <b>Reserved</b>  |
| <b>9. Criminal Threats and Hate Crimes</b>       | <b>A. Threatening, Stalking, or Terrorizing</b> | 1300             | Criminal Threat  |
|  |   | 1301             | Stalking   |
|  |   | 1302             | Terrorizing by Destruction Device or Explosive, or Arson                     |
|  |   | <b>1303–1349</b> | <b>Reserved</b>  |
|  | <b>B. Hate Crimes</b>                           | 1350             | Hate Crime: Misdemeanor Interference With Civil Rights by Force              |
| <b>Criminal Threats and Hate Crimes (cont'd)</b> |   | 1351             | Hate Crime: Misdemeanor Interference With Civil Rights by Threat             |
|  |   | 1352             | Hate Crime: Misdemeanor Interference With Civil Rights by Damage to Property |
|  |   | 1353             | Hate Crime: Disability Defined   |
|  |   | 1354             | Hate Crime Allegation: Felony Enhancement                                    |
|  |   | 1355             | Hate Crime Allegation: Misdemeanor Enhancement                               |
|  |   | <b>1356–1399</b> | <b>Reserved</b>  |
| <b>10. Criminal Street Gang</b>                  |   | 1400             | Active Participation in Criminal Street Gang                                 |
|  |   | 1401             | Felony Committed for Benefit of Criminal Street Gang                         |
|  |   | 1402             | Gang-Related Firearm Enhancement   |