

Virginia Model Jury Instructions – Criminal

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Instruction No. 2.050 Preliminary Instructions to Jury

Members of the jury, the order of the trial of this case will be in four stages:

- 1. Opening statements**
- 2. Presentation of the evidence**
- 3. Instructions of law**
- 4. Final argument**

After the conclusion of final argument, I will instruct you concerning your deliberations. You will then go to your room, select a foreperson, deliberate, and arrive at your verdict.

First, the Commonwealth's attorney may make an opening statement outlining his or her case. Then the defendant's attorney also may make an opening statement. Neither side is required to do so.

[Second, following the opening statements, the Commonwealth will introduce evidence, after which the defendant then has the right to introduce evidence (but is not required to do so). Rebuttal evidence may then be introduced if appropriate.]

[Second, following the opening statements, the evidence will be presented.]

Third, at the conclusion of all evidence, I will instruct you on the law which is to be applied to this case.

Once the evidence has been presented and you have been instructed on the law, then the attorneys may make their closing arguments. The Commonwealth's attorney will argue first, the defendant's attorney may reply, and the Commonwealth's attorney may close in rebuttal.

Members of the jury, your function in the trial of this case is to reach a unanimous verdict that is based solely on the evidence and the instructions of law which you will be given after all the evidence has been presented. The law applicable to this case is given to you in these instructions and in the other instructions you will receive at the close of all evidence, and it is your duty to follow all such instructions.

[The defendant is presumed to be innocent. You should not assume the defendant is guilty because he has been charged and is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the crime beyond a reasonable doubt. This does not require proof beyond all possible doubt, nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction.]

[A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.]

No statement or ruling or remark that I may make during the course of the trial is intended to indicate my opinion as to what the facts are. It is the function of the jury to consider the evidence and determine the facts in this case.

The evidence which you are to consider consists of testimony of witnesses, any exhibits admitted into evidence, and any facts agreed upon between the parties and presented to you in the form of a stipulation. The admission of evidence in court is governed by rules of law; and from time to time, it may be the duty of the attorneys to make objections and my duty as judge to rule on those objections and decide whether or not you can consider certain evidence. You must not consider testimony or exhibits to which an objection was sustained or which has been ordered stricken. If an objection is overruled, then you may consider that evidence together with all other evidence in the case. The opening statements and closing arguments of the attorneys are intended to help you in understanding the evidence and in applying the law, but their statements are not evidence.

In your determination of what the facts are, you alone must determine the credibility of the witnesses and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case. You should not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper. You should use your common sense in considering the evidence, and you may draw reasonable inferences from that evidence; but in doing so, you should not indulge in guesswork or speculation. From consideration of these things and all the other circumstances of the case, you should determine which witnesses are more believable and weigh their testimony accordingly. Until this case is submitted to you for your deliberations, you should not decide any issue in the case and you should not discuss the case with anyone or remain within hearing of anyone who is discussing it.

There will be occasional recesses during the trial. During the recesses, you should not discuss the case with your fellow jurors nor go to the scene or make any independent investigation or receive any information about the case from radio, television, the Internet, or the newspapers. Once your deliberations commence, then you must discuss the case only in the jury room when all the members of the jury are present.

Do not attempt at any time prior to the conclusion of the case to research any fact, issue, or law related to this case, whether by discussion with others, by research in a library or on the Internet, or by any other means or source. You must not use Internet maps, or any other program or device to search for and view any location discussed in the testimony. You must not search for any information about the case, or the law which applies to the case, or the people involved in the case, including the parties, the witnesses, the lawyers, or the judge. You must not communicate with anyone about the case by any other means, including by telephone, text messages, e-mail, internet chat or chat rooms, blogs, or social web sites. I expect you will inform me if you become aware of another juror's violation of these instructions.

Just prior to your deliberations, you will be given a final instruction with regard to your

selection of a leader, the conduct of your deliberations, and the forms for your verdict.

The faithful and proper performance by you of your duty is vital to the administration of justice. On behalf of the court and the litigants, we appreciate your giving your complete attention to the case as it is presented.

Thank you.

Instruction No. 2.100 Reasonable Doubt and Presumption of Innocence

The defendant is presumed to be innocent. You should not assume the defendant is guilty because he has been charged and is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the crime beyond a reasonable doubt. This does not require proof beyond all possible doubt, nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction.

There is no burden on the defendant to produce any evidence.

A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

Instruction No. 2.110 Identity of Defendant As the Perpetrator

The Commonwealth bears the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the crime charged. If the Commonwealth has not met this burden, you shall find the defendant not guilty.

Instruction No. 2.150 Failure of Defendant to Testify

The defendant does not have to testify, and exercise of that right cannot be considered by you.

Instruction No. 2.200 Character of Defendant

You may consider the character of the defendant when proven by the evidence, whether good or bad, along with the other facts and circumstances in the case in determining his guilt or innocence.

Instruction No. 2.250 Where Previous Conviction of the Same or Similar Crime Is an Element of Offense

Evidence that the defendant was previously convicted of a similar offense is not proof that he [distributed heroin; drove while under the influence of alcohol, etc.] on (date of current offense), and such evidence may not be considered by you in determining whether the defendant [distributed heroin; drove while under the influence of alcohol, etc.] on (date of current offense).

Instruction No. 2.260 Prior Crime Evidence, Generally

You may consider evidence that the defendant committed a crime other than the crime for which he is on trial only [as evidence of the defendant's motive; as evidence of the defendant's intent; as evidence of the defendant's scheme or plan; as evidence of the defendant's identity; as evidence of the defendant's knowledge; as evidence of the defendant's conduct and feelings toward the victim and relations between them; as evidence of the defendant's malice; as evidence of the defendant's premeditation; as evidence of the defendant's opportunity; as evidence of the absence of mistake or accident on the part of the defendant; as evidence to negate the defense that the defendant was merely an innocent bystander; as evidence of the unique nature of the method of committing the crime charged; if prior conviction of that crime is an element that must be proven] **in connection with the crime for which he is on trial and for no other purpose.**

Instruction No. 2.300 Flight from Scene or Use of False Name to Avoid Prosecution, Detection, Apprehension or Arrest

If a person [leaves the place where a crime was committed to avoid prosecution, detection, apprehension or arrest; flees to avoid prosecution, detection, apprehension or arrest; intentionally assumes a false name immediately after the commission of a crime], **this creates no presumption that the person is guilty of having committed the crime. However, it is a circumstance which you may consider along with the other evidence.**

Instruction No. 2.330 Indictment by Grand Jury

The fact that the defendant has been indicted by a grand jury is not evidence against him, and you should not consider it.

Instruction No. 2.360 Rejected and Stricken Matter

You must not consider any matter that was rejected or stricken by the Court. It is not evidence and should be disregarded.

Instruction No. 2.370 Exhibits

Upon your request, any exhibits introduced into evidence may be sent to the jury room [or otherwise made available] to be considered in your deliberations.

Instruction No. 2.400 Circumstantial Evidence

It is not necessary that each element of the offense be proved by direct evidence, for an element may also be proved by circumstantial evidence. You may convict the defendant on circumstantial evidence alone, or on circumstantial evidence combined with other evidence, if you believe from all the evidence that the defendant is guilty beyond a reasonable doubt.

When the Commonwealth relies upon circumstantial evidence, the circumstances proved must be consistent with guilt and inconsistent with innocence. It is not sufficient that the circumstances proved create a suspicion of guilt, however strong, or even a probability of guilt.

The evidence as a whole must exclude every reasonable theory of innocence.

Instruction No. 2.500 Credibility of Witnesses

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

Instruction No. 2.510 Failure to Record Custodial Interrogation to be Considered in Weighing the Evidence

The failure of law enforcement to record a custodial interrogation that occurred at a place of detention is a circumstance you may consider, along with other evidence, in determining the weight you give to statements made by the defendant.

Instruction No. 2.530 Definition of Proximate Cause

A proximate cause of an accident, injury, or damage is a cause that, in natural and continuous sequence, produces the accident, injury, or damage. It is a cause without which the accident, injury, or damage would not have occurred.

Instruction No. 2.540 Prior Conviction of Felony or Crime Involving Moral Turpitude

You may consider proof of the [witness's; defendant's] prior conviction of a [felony; crime involving moral turpitude] as affecting his credibility, but it does not render him incompetent to testify nor shall you consider it as evidence of his guilt of the offense for which he is on trial [nor shall you consider it in fixing punishment if you do find him guilty].

Instruction No. 2.550 Statement of the Defendant

The statements presented to you as having been made by the defendant are submitted for your consideration along with all the other evidence. The weight, value, credibility, and reliability of those statements are questions for your determination.

Instruction No. 2.560 Prior Inconsistent Statement of Witness

If you believe from the evidence that a witness [other than the defendant] previously made a statement inconsistent with his testimony at this trial, the only purpose for which that statement may be considered by you is for its bearing on the witness' credibility. It is not evidence that what the witness previously said is true.

Instruction No. 2.580 Prior Inconsistent Statement of Defendant

If you believe from the evidence that the defendant previously made a statement inconsistent with his testimony at this trial, that previous statement may be considered by you as proof that what the defendant previously said is true.

Instruction No. 2.700 Duty of Jury in Fixing Punishment

You have found the defendant guilty of (name of offense). You should impose such punishment as you feel is just under the evidence and within the instructions of the Court. You are not to concern yourselves with what may happen afterwards.

(Effective July 1, 2021, an accused must request to be sentenced by a jury, by written pleading filed at least 30 days prior to trial. Otherwise, an accused found guilty by the jury will be sentenced by the court. Va. Code Ann. § 19.2-295(A). This instruction should only be used when such request has been timely made by the defendant.)

Instruction No. 2.705 Parole

Any person sentenced to a term of incarceration for a felony offense shall not be eligible for parole upon that sentence.

(Effective July 1, 2021, an accused must request to be sentenced by a jury, by written pleading filed at least 30 days prior to trial. Otherwise, an accused found guilty by the jury will be sentenced by the court. Va. Code Ann. § 19.2-295(A). This instruction should only be used when such request has been timely made by the defendant.)

Instruction No. 2.710 Parole—Age

Any person sentenced to a term of incarceration for a felony offense (i) who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed, or (ii) who has reached the age of sixty or older and who has served at least ten years of the sentence imposed may petition the Parole Board for conditional release.

(Effective July 1, 2021, an accused must request to be sentenced by a jury, by written pleading filed at least 30 days prior to trial. Otherwise, an accused found guilty by the jury will be sentenced by the court. Va. Code Ann. § 19.2-295(A). This instruction should only be used when such request has been timely made by the defendant.)

Instruction No. 2.720 Possible Verdicts

Under the charge against the defendant, you may return any one of the following verdicts, which verdict must be unanimous:

- (1) Not guilty; [or]**
- (2) Guilty [of murder in the first degree; or**
- (3) Guilty of murder in the second degree; or**
- (4) Guilty of voluntary manslaughter].**

Instruction No. 2.740 Form Findings—Felony and Misdemeanor

We the jury find the defendant guilty of (describe most serious offense first such as: malicious wounding, grand larceny, etc.) **as charged in the indictment.**

Foreman

OR

We the jury find the defendant guilty of (describe next most serious offense) **as charged in the indictment.**

Foreman

OR

We the jury find the defendant guilty of (describe least serious offense) **as charged in the indictment.**

Foreman

OR

We the jury find the defendant guilty of (misdemeanor) **as charged in the indictment.**

Foreman

OR

We the jury find the defendant not guilty.

Foreman

Instruction No. P2.740 Form Findings—Felony and Misdemeanor

We, the jury, having found the defendant guilty of (name of the offense), fix his punishment at

Foreman

(Effective July 1, 2021, an accused must request to be sentenced by a jury, by written pleading filed at least 30 days prior to trial. Otherwise, an accused found guilty by the jury will be sentenced by the court. Va. Code Ann. § 19.2-295(A). These finding forms should only be used when such request has been timely made by the defendant.)

Instruction No. 2.780 Verdict—“Allen Charge”

As you have been told, your verdict must be unanimous. If you can possibly reach a verdict, it is your duty to do so. You should listen to the views and opinions of your fellow jurors with fairness and candor and you should give consideration to what they say. However, you must decide the case for yourself and you should reach an agreement only if it can be done without sacrificing your individual judgment. During the course of your deliberations, each of you, whether in the majority or the minority, should not hesitate to re-examine your own views and change your opinion if you are convinced it was wrong. No juror, however, should give up his honest opinion as to the evidence solely because of the opinion of his fellow jurors or for the mere purpose of returning a verdict.

If you can reach a decision without surrendering your conscientious opinion, it is your duty to do so.

Please return to the jury room and give the matter your further consideration. Thank you.

Instruction No. 2.800 Note on Eyewitness Identification

Granting an instruction on the subject of eyewitness testimony is a matter of discretion for the trial court. The Court has affirmed judgments in which the trial court refused to give a cautionary instruction on eyewitness identification because it concluded that the matters contained in the proposed instructions were covered by other instructions. See *Watson v. Commonwealth*, 298 Va. 197, 210, 835 S.E.2d 906, 912 (2019); *Graham v. Commonwealth*, 250 Va. 79, 86–87, 459 S.E.2d 97, 100–01 (1995); *Satcher v. Commonwealth*, 244 Va. 220, 256, 421 S.E.2d 821, 843 (1992); *Poole v. Commonwealth*, 211 Va. 258, 260–61, 176 S.E.2d 821, 823–24 (1970); *Ives v. Commonwealth*, 184 Va. 877, 879, 36 S.E.2d 904, 904–05 (1946).

In 2008, the Court reiterated this approach. In *Daniels v. Commonwealth*, 275 Va. 460, 657 S.E.2d 84 (2008), the Court affirmed the lower court’s refusal to grant an instruction on eyewitness identification, reasoning that the instructions which were given “‘fully and fairly’ covered the legal principles addressed in the proposed instruction.” *Id.* at 467, 657 S.E.2d at 87. In affirming the trial court’s decision not to give the proffered instruction, the Supreme Court explicitly stated that “[n]othing in [the] instruction address[ed] the concept of sincere mistake or the inherent dangers of eyewitness identification testimony.” *Id.* at 466, 657 S.E.2d at 87. Consequently, the Court declined to consider those arguments in reaching its decision.

More recently, in *Payne v. Commonwealth*, 292 Va. 855, 794 S.E.2d 577 (2016), the Supreme Court stated that its holding was “no different” from that in *Daniels*, where the Court had held that, while an eyewitness ID instruction was not required in every case where identification was central to the case, neither was it prohibited, and in the proper case the court would not abuse its discretion in granting such an instruction. *Id.* at 872, 794 S.E.2d at 586.

Furthermore, the Court in *Payne* held that the granted instructions adequately addressed the issue of the identification. For example, Model Jury Instruction No. 2.500 addressed both the issue of reliability of eyewitness testimony as well as credibility by permitting the jury to consider the witnesses’ opportunity for knowing the truth and for having observed the things about which they testified. *Id.* at 870–71, 794 S.E.2d at 585. The instruction also advised that the jurors could use their “common sense,” and could consider “all the other circumstances of the case” in determining the believability and weight of testimony.

In refusing Payne’s proffered eyewitness identification instruction, the Court opined that the specificity of that instruction “counseled against its use.” In essence, the specificity suggested a limitation on what the jury could consider, to the factors included in the instruction. *Id.* at 871, 794 S.E.2d at 585–86. The trial court had said that the instruction limited the jury to a “four-point checklist of factors.” *Id.* at 864, 794 S.E.2d at 582.

In *Watson v. Commonwealth*, 298 Va. 197, 210, 835 S.E.2d 906, 912 (2019), the Court affirmed the trial court’s refusal to issue a verbatim version of Instruction No. 2.800, even though the Court noted that there was no question that the model instruction was a correct statement of the law, was supported by the evidence, and was otherwise the sort of instruction that the Court anticipated in *Payne*. In so ruling, the Court emphasized that a court may properly exclude an instruction that both correctly states the law and is supported by the evidence as long as other granted instructions fully and fairly cover the relevant

principles of law. *Id.*

In *Walker v. Commonwealth*, ___ Va. ___, 887 S.E.2d 544, 2023 Va. LEXIS 24 (June 1, 2023), the trial court granted the model instruction, and on appeal the Supreme Court held that trial courts have the discretion to grant such an instruction. The Court noted that granting such an instruction is one way trial courts can address the problem of flawed eyewitness testimony. *Id.*

At present, the vast majority of federal circuits and over 20 states have adopted an instruction addressing eyewitness testimony. See *Perry v. New Hampshire*, 565 U.S. 228, 246 n.7 (2012) (citing model eyewitness instructions in federal and state jurisdictions). The approaches taken by the federal circuits and sister states vary as to whether such an instruction is mandatory. In *Perry*, the Court grounded its holding—that due process does not require a preliminary inquiry into the reliability of an eyewitness identification not arranged by law enforcement—partially on the “safeguards built into [the] adversary system that caution juries against placing undue weight on eyewitness testimony of questionable reliability.” *Id.* at 245. According to the Court, one of these safeguards is the availability of “[e]yewitness-specific jury instructions, which many federal and state courts have adopted, [which] likewise warn the jury to take care in appraising identification evidence.” *Id.* at 246. A number of courts in sister states have adopted model eyewitness instructions both before and after *Perry*. *State v. Henderson*, 27 A.3d 872 (N.J. 2011); *State v. Long*, 721 P.2d 483 (Utah 1986); *State v. Cabagbag*, 127 Haw. 302 (Haw. 2012); *In re: Standard Jury Instructions in Criminal Cases—Report No. 2011-05, No. SC11-2517* (Fla. 2012).

Other courts adopted instructions prior to *Perry*. See *Perry*, 565 U.S. at 246–47 (citing instructions from federal and state courts). See, e.g., *United States v. Greene*, 704 F.3d 298, 313 (4th Cir. 2013); *Barber v. United States*, 412 F.2d 775, 777–78 (5th Cir. 1969); *Commonwealth v. Rodriguez*, 391 N.E.2d 889, 897–98 (Mass. 1979); *Commonwealth v. Santoli*, 680 N.E.2d 1116, 1120–21 (Mass. 1997); *State v. Dyle*, 899 S.W.2d 607 (Tenn. 1995); *State v. Long*, 721 P.2d 483, 487–95 (Utah 1986); *State v. Watson*, 318 S.E.2d 603, 614–15 (W. Va. 1984). Efforts to further improve instructions addressing eyewitness testimony have continued subsequent to *Perry*. See, e.g., *Commonwealth v. Gomes*, 22 N.E.3d 897, 909–10 (2015) (explaining that “a principle is so generally accepted that it is appropriate to include in a model eyewitness identification instruction where there is a near consensus in the relevant scientific community adopting that principle,” and concluding that, based on scholarly research, analyses by other courts, amici submissions, and a state court study group report and comments, “there are various principles regarding eyewitness identification for which there is a near consensus in the relevant scientific community” making it “appropriate to revise the [Commonwealth v.] Rodriguez [model eyewitness] instruction to include them”); Supreme Judicial Court of Massachusetts, Study Group on Eyewitness Evidence—Report and Recommendations to the Justices (July 25, 2013), available at [<http://perma.cc/WY4M-YNZN> (accessed May 20, 2023)], and comments responding thereto, available at [<http://perma.cc/UF62-STVZ> (accessed May 20, 2023)].

Given the complexity of the issue as well as the Supreme Court’s view that a trial court may grant such an instruction in its discretion, the instruction below represents the committee’s effort to craft such an instruction in order to assist the practitioner. The court and practitioners should be mindful that this instruction has not been approved by the Court of Appeals of Virginia or the Supreme Court of Virginia.

You should evaluate the testimony of an eyewitness who identified the defendant as the person he saw [committing the crime; involved in the crime] in the same manner as you would for any other witness, including any biases or motives to lie. Additionally, even if

you believe the witness was trying to tell the truth, you must still decide whether the witness was accurate about the identification or instead made an honest mistake. In weighing such testimony, you may consider the following: Whether the witness had an adequate opportunity to observe the person [committing the crime; involved in the crime]; circumstances such as [the amount of time the witness had to observe the person (committing a crime; involved in the crime); the distance between the witness and the person (committing the crime; involved in the crime); lighting conditions; weather conditions; obstructions; how closely the witness was paying attention to the person (committing the crime; involved in the crime); whether the witness knew a crime was being committed; the extent to which the person's features were visible and undisguised; whether a weapon was present that may have affected the attention of the witness], and any other circumstances you believe are important. You may consider whether the witness had the ability to observe the person [committing the crime; involved in the crime]. In that regard circumstances you may consider include [the witness's intelligence; whether the witness was stressed or frightened, fatigued, injured, or under the influence of drugs or alcohol at the time he made the observations; whether the witness had impaired vision which was uncorrected at the time he made the observations; whether the witness and the person (committing a crime; involved in the crime) were of different races, because some witnesses may have greater difficulty in accurately identifying members of a different race], and any other circumstances you believe are important. You may consider whether the witness's identification of the defendant was the product of the witness's own memory or to what extent it may have been the result of outside influences. Circumstances you may consider include [whether the witness ever gave a description of the person who (committed the crime; was involved in the crime) and, if so, how that description compares to the defendant; whether the witness knew or had seen the defendant prior to witnessing the crime; the amount of time that passed between the crime and the witness's later identification of the defendant; whether the witness made the identification after being exposed to any outside influences or information, which may include any opinions, descriptions, or identifications given by others, photographs, newspaper accounts, televised or online news stories, or any other outside information or influences; whether the witness was ever presented with the defendant and failed to identify the defendant as the person who (committed the crime; was involved in the crime) or previously identified a different individual as the person who (committed the crime; was involved in the crime), whether the witness was able to identify other participants in the crime], and any other circumstances you believe are important. In weighing the witness's identification, you may consider whether the procedures used by law enforcement had any influence on the witness's identification. For example, you may consider the manner in which photographs were selected and presented to the witness, or comments made by the police to the witness. The witness(es) who testified about the identification of the person who [committed the crime(s); was involved in the crime] do(es) not have to be certain that the identification he made is correct. A witness may be unsure and still be correct in his identification. On the other hand, a witness's confidence in his identification does not mean that the identification is accurate. This instruction is not intended to direct you to give more or less weight to the eyewitness identification evidence. It is your duty to determine what weight to give to that evidence.

As with all instructions, the instruction should be revised to fit the facts of the particular case. Thus, for example, if the eyewitness did not make a cross-racial identification, the language about an

identification of a person of a different race should be removed from the instruction.

The instruction provides that the jury may consider whether the procedures law enforcement officers used may have influenced the witness's identification. The Model Policy on Eyewitness Identification, which was adopted by the Virginia Department of Criminal Justice Services on November 16, 2011, and later revised, sets forth best practices with regard to lineup and photographic lineup procedures. These detailed procedures, for example, provide that in photographic lineups, the photographs should be presented sequentially rather than all at once, give instructions about the use of fillers, and instruct law enforcement personnel to “[a]void saying anything to the witness that may influence the witness’s selection.” The Model Policy is available online at the website of the Department of Criminal Justice Services. See https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/law-enforcement/files/model-policy/lineups-eyewitness_identification.doc (March 19, 2014 rev. ed.) (last visited May 20, 2023).

Instruction No. 3.100 Principal in the Second Degree

A principal in the second degree is a person who did not actually commit the crime, but rather is present and knowingly assists by helping in the commission of the crime. It must be shown that he [intended by his words, gestures, signals or actions to encourage, advise, urge, or help the person who actually committed the crime; shared the criminal intent of the person who actually committed the crime]. Presence and consent alone are not sufficient to make a person a principal in the second degree.

A principal in the second degree is liable for the same punishment as the person who actually committed the crime.

Instruction No. 3.150 Principal in the Second Degree—Presence Defined

A person is considered present at the scene of the crime if he was in a place to [incite, encourage, advise or assist] in the commission of the crime.

Presence may be actual or constructive. There is constructive presence when several persons set out on a common unlawful purpose and each takes the part assigned to him for the success of the common enterprise.

Instruction No. 3.160 Concert of Action

If there is concert of action with the resulting crime one of its incidental probable consequences, then whether such crime was originally contemplated or not, all who participate in any way in bringing it about are equally answerable and bound by the acts of every other person connected with the consummation of such resulting crime.

Instruction No. 3.200 Accessory Before the Fact

An accessory before the fact is one who was not present at the time of the commission of the (name of crime) but who, before the commission of the (name of crime), in some way encouraged, incited or aided in the commission of the (name of crime) knowing or having reason to know of the intent of the principal to commit the (name of crime).

An accessory before the fact is liable for the same punishment as the person who actually committed the crime.

Instruction No. 3.300 Accessory After the Fact

The defendant is charged with being an accessory after the fact to the crime of (name of crime). The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That some person other than defendant committed the crime of (name of crime); and**
- (2) That the (name of crime) was completed; and**
- (3) That the defendant knew or should have known that the person had committed the (name of crime); and**
- (4) That the defendant comforted, relieved, hid, or in any other way assisted the person who committed the (name of crime) with the intent of helping that person escape or delay capture, prosecution or punishment.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P3.300(a) Accessory After the Fact—Homicide Punishable as a Class 1 or 2 Felony

You have found the defendant guilty of being an accessory after the fact to the crime of (name of homicide that is punishable as a Class 1 or 2 felony).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P3.300(b) Accessory After the Fact—Other Felonies

You have found the defendant guilty of being an accessory after the fact to the crime of (name of felony that is not a homicide punishable as a Class 1 or 2 felony).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 3.400 Testimony of Accomplice

(Name of person) has testified that he was an accomplice in the commission of the crime charged in the indictment. While you may find your verdict upon his uncorroborated testimony, you should consider such testimony with great care and you are cautioned as to the danger of convicting the defendant upon the uncorroborated testimony of an accomplice. Nevertheless, if you are satisfied from the evidence of the guilt of the defendant beyond a reasonable doubt, the defendant may be convicted upon the uncorroborated evidence of an accomplice.

Instruction No. 3.500 Principal in the Second Degree, Accessory Before the Fact—Illustration

The defendant is charged with the crime of burglary. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the dwelling house of another was broken into and entered without permission; and**
- (2) That the breaking and entering was done in the nighttime; and**
- (3) That it was done with the intent to commit [larceny; (name of crime)]; and**
- (4) That the defendant was [a principal in the second degree; an accessory before the fact].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the above elements of the crime as charged, then you shall find the defendant not guilty.

Instruction No. P3.500 Principal in the Second Degree, Accessory Before the Fact—Illustration

You have found the defendant guilty of the crime of burglary.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years; or**
- (2) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 3.600 Misdemeanors

Every person who is present at the commission of a misdemeanor, aiding the act by words, gestures, signals, or actions, is liable for the same punishment as if he actually committed the crime. Presence and consent alone are not sufficient. It must be shown that the defendant intended his words, gestures, signals, or actions to in some way aid the person committing the crime to commit it.

Presence includes being at some convenient distance from the actual place of commission of the crime, if the defendant at such distance was in fact aiding the act by words, gestures, signals, or actions.

Instruction No. 4.100 Abduction—General

The defendant is charged with the crime of abduction. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant by [force; intimidation; deception] did [seize; take; transport; detain; hide] (name of person); and**
- (2) That the defendant did so with the intent [to deprive (name of person) of his personal liberty; to withhold or conceal (name of person) from (name of person or authority legally entitled to his charge)]; and**
- (3) That the defendant acted without legal justification or excuse.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P4.100 Abduction—General

You have found the defendant guilty of the crime of abduction.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 4.200 Abduction—For Value or Immoral Purpose

The defendant is charged with the crime of abduction. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant by [force; intimidation; deception] did [seize; take; transport; detain; hide] (name of person); and
- (2) That the defendant did so with the intent [to deprive (name of person) of his personal liberty; to withhold or conceal (name of person) from (name of person or authority legally entitled to his charge)]; and
- (3) That [the defendant did so with the intent to obtain money or other benefit of value; the defendant did so with the intent to sexually molest (name of person); (name of person) was under the age of sixteen (16) years and the abduction was for the purpose of prostitution or living together without being married; that the abduction was for the purpose of prostitution; that the abduction was of a minor for the purpose of manufacturing child pornography]; and
- (4) That the defendant acted without legal justification or excuse.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P4.200 Abduction—For Value or Immoral Purpose

You have found the defendant guilty of the crime of abduction.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Imprisonment for life or for a specific term, but not less than twenty (20) years; or**
- (2) Imprisonment for life or for a specific term, but not less than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 4.300 Abduction—By Parent, Family or Household Member, Within the Commonwealth

The defendant is charged with the crime of abduction. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant is a [parent; family member; household member] of (name of child); and**
- (2) That the defendant by [force; intimidation; deception] did [seize; take; transport; detain; hide] (name of child); and**
- (3) That the defendant did so with the intent [to deprive (name of child) of his personal liberty; to withhold or conceal (name of child) from (name of person, authority, or institution legally entitled to his charge)]; and**
- (4) That the defendant acted without legal justification or excuse and in violation of a court order issued in a then pending proceeding.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P4.300 Abduction—By Parent, Family or Household Member, Within the Commonwealth

You have found the defendant guilty of the crime of abduction.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 4.400 Abduction—By Parent, Family or Household Member, Outside the Commonwealth

The defendant is charged with the crime of abduction. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant is a [parent; family member, household member] of (name of child); and**
- (2) That the defendant by [force; intimidation; deception] did [seize; take; transport; detain; hide] (name of child); and**
- (3) That the defendant did so with the intent [to deprive (name of child) of his personal liberty; to withhold or conceal (name of child) from (name of person, authority, or institution legally entitled to his charge)]; and**
- (4) That the defendant acted without legal justification or excuse and in violation of a court order issued in a then pending proceeding; and**
- (5) That (name of child) was removed from the Commonwealth by the defendant.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P4.400 Abduction—By Parent, Family or Household Member, Outside the Commonwealth

You have found the defendant guilty of the crime of abduction.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 4.500 Violation of Custody/Visitation Order Within the Commonwealth

The defendant is charged with the crime of withholding a child from the child's parent or legal guardian in violation of a court order. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant withheld (name of child) from (name of parent or legal guardian); and**
- (2) That the defendant did so knowingly, wrongfully and intentionally; and**
- (3) That the defendant did so in a clear and significant violation of a court order respecting the custody or visitation of such child.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [and fix his punishment at a fine of a specific amount, but not more than \$500].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. 4.600 Violation of Custody/Visitation Order Outside the Commonwealth

The defendant is charged with the crime of withholding a child from the child's parent or legal guardian in violation of a court order. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant withheld (name of child) from (name of parent or legal guardian); and**
- (2) That the defendant did so knowingly, wrongfully and intentionally; and**
- (3) That the defendant did so in a clear and significant violation of a court order respecting the custody or visitation of such child; and**
- (4) That (name of child) was withheld outside of the Commonwealth by the defendant.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P4.600 Violation of Custody/Visitation Order Outside the Commonwealth

You have found the defendant guilty of the crime of withholding a child from the child's parent or other legal guardian in violation of a court order.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 6.100 Manufacturing or Bottling Without License

The defendant is charged with the crime of [manufacturing alcoholic beverages; bottling beer for sale] without being licensed to do so. The Commonwealth must prove beyond a reasonable doubt that:

- (1) the defendant [manufactured alcoholic beverages; bottled beer for sale]; and**
- (2) that he did so without a license.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements above, then you shall find the defendant not guilty.

Instruction No. P6.100 Manufacturing or Bottling Without License

You have found the defendant guilty of the crime of [manufacturing alcoholic beverages; bottling beer for sale] without being licensed to do so.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 6.150 Manufacturing While Armed

The defendant is charged with the crime of unlawfully manufacturing [transporting; selling] **alcoholic beverages while in possession of a** (specify dangerous weapon described in Va. Code Ann. § 18.2-308(A)). **The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That the defendant engaged in the unlawful** [manufacture; transport; sale of alcoholic beverages]; **and**
- (2) That, while doing so, the defendant** [carried on or about his person; had in his possession, actual or constructive, within 100 yards of any place where the alcoholic beverages were being manufactured; had on or in any vehicle that he may have used to aid him in such purchase] **a** (specify dangerous weapon described in Va. Code Ann. § 18.2-308(A)).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the crime, then you shall find the defendant not guilty.

Instruction No. P6.150 Manufacturing While Armed

You have found the defendant guilty of the crime of unlawfully manufacturing [transporting; selling] **alcoholic beverages while in possession of a** (specify dangerous weapon described in Va. Code Ann. § 18.2-308(A)).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 6.200 Illegal Sale—General

The defendant is charged with the crime of illegally selling an alcoholic beverage without being licensed to do so. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) that the defendant sold an alcoholic beverage; and
- (2) that he did so without a license.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the above elements of the crime as charged, then you shall find the defendant not guilty.

Instruction No. P6.200 Illegal Sale—General

You have found the defendant guilty of the crime of illegally selling an alcoholic beverage without being licensed to do so. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 6.250 Illegal Sale—To Persons Not Permitted to Buy

The defendant is charged with the crime of illegally selling an alcoholic beverage to [a person; persons] not permitted to buy an alcoholic beverage. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant sold an alcoholic beverage; and**
- (2) That at the time of such sale, the defendant knew or had reason to believe that the individual(s) to whom the sale was made was [less than twenty-one (21) years old; a person to whom the sale of alcoholic beverages is prohibited by court order; an intoxicated person].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the crime, then you shall find the defendant not guilty.

Instruction No. P6.250 Illegal Sale—To Persons Not Permitted to Buy

You have found the defendant guilty of the crime of illegally selling an alcoholic beverage to [a person; persons] not permitted to buy an alcoholic beverage. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 6.300 Illegal Purchase—General

The defendant is charged with the crime of purchasing an alcoholic beverage from a person not authorized to sell. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant purchased an alcoholic beverage; and**
- (2) That the purchase was made from a person not authorized by law to make such sale.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the crime, then you shall find the defendant not guilty.

Instruction No. P6.300 Illegal Purchase— General

You have found the defendant guilty of the crime of illegally purchasing an alcoholic beverage from a person not authorized to sell. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 6.350 Illegal Purchase or Possession—By Persons Not Permitted to Purchase or Possess

The defendant is charged with the crime of illegally [purchasing; consuming; possessing; attempting to purchase; attempting to consume; attempting to possess] **an alcoholic beverage. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That the defendant** [purchased; consumed; possessed; attempted to purchase; attempted to consume; attempted to possess] **an alcoholic beverage; and**
- (2) That at the time of such** [purchase; consumption; possession; attempt to purchase; attempt to consume; attempt to possess], **the defendant was** [less than twenty-one years old; a person to whom the sale of alcoholic beverages is prohibited by court order; an intoxicated person].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the crime, then you shall find the defendant not guilty.

Instruction No. P6.350 Illegal Purchase or Possession—By Persons Not Permitted to Purchase or Possess

You have found the defendant guilty of the crime of illegally [purchasing; consuming; possessing; attempting to purchase; attempting to consume; attempting to possess] an alcoholic beverage. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A fine of a specific amount, but not less than \$500 nor more than \$2,500; or,**
- (2) A fine of a specific amount, but not less than \$500 nor more than \$2,500, and confinement in jail for a specific time, but not more than twelve (12) months.**

Instruction No. 6.400 Maintaining Common Nuisance—Manufacture, Storage, Sale, Dispensing, Giving Away, or Use of Alcoholic Beverages

The defendant is charged with the crime of [maintaining; aiding; abetting; knowingly associating with others in maintaining] a common nuisance. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That alcoholic beverages were frequently [manufactured; stored; sold; dispensed; given away; used] [at a house; boathouse; building; club or fraternity or lodge room; boat; car; other place] in a manner contrary to law; and

(2) That the defendant [maintained; aided; abetted; knowingly associated with others in maintaining] such [place].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P6.400 Maintaining Common Nuisance—Manufacture, Storage, Sale, Dispensing, Giving Away, or Use of Alcoholic Beverages

You have found the defendant guilty of the crime of [maintaining, keeping, or operating; aiding; abetting; knowingly associating with others in maintaining, keeping, or operating] a common nuisance. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 7.050 Fire Presumed Accidental

When a building or structure burns, the fire is presumed to have been caused by accident rather than from the deliberate act of anyone. The defendant is entitled to this presumption unless the Commonwealth proves beyond a reasonable doubt that he intentionally caused the fire.

Instruction No. 7.100 Burning Dwelling

The defendant is charged with the crime of arson. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [burned; by use of an explosive device or substance destroyed in whole or in part; caused to be burned or destroyed; aided, counseled or procured the burning or destruction of; set fire to anything the burning of which caused the burning of; aided, counseled or procured the setting fire to anything the burning of which caused the burning of] **a** [dwelling house; manufactured home; hotel; hospital; mental health facility; house, railroad car, boat, vessel or river craft, in which persons usually dwell or lodge; jail; prison; or any occupied church or church building immediately adjacent thereto];
and

(2) That the defendant acted with malice; and

(3) That the [dwelling house; manufactured home; hotel; hospital; mental health facility; house, railroad car, boat, vessel or river craft, in which persons usually dwell or lodge; jail; prison; or any occupied church or church building immediately adjacent thereto] **was occupied.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of arson of an occupied structure.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the above crime, but you find that the [dwelling house; manufactured home; hotel; hospital; mental health facility; house, railroad car, boat, vessel or river craft, in which persons usually dwell or lodge; jail; prison; or any occupied church or church building immediately adjacent thereto] **was unoccupied at the time the crime was committed, then you shall find the defendant guilty of arson of an unoccupied building.**

If you find the defendant guilty, you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the first two elements of the above crime, then you shall find the defendant not guilty.

Instruction No. P7.100(a) Burning Dwelling— Occupied

You have found the defendant guilty of the crime of arson of an occupied dwelling.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Imprisonment for life or for a specific term, but not less than five (5) years; or**
- (2) Imprisonment for life or for a specific term, but not less than five (5) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P7.100(b) Burning Dwelling— Unoccupied

You have found the defendant guilty of the crime of arson of an unoccupied dwelling.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 7.150 Dwelling House— Definition

A dwelling house is any structure in which one or more persons usually dwell or lodge.

Instruction No. 7.200 Burning Structure or Building Other Than Dwelling—Occupied

The defendant is charged with the crime of arson. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [burned; by use of an explosive device or substance destroyed in whole or in part; caused to be burned or destroyed; aided, counseled or procured the burning or destruction of; set fire to anything the burning of which caused the burning of; caused to be set on fire anything, the burning of which caused the burning of; aided, counseled or procured the setting fire to anything the burning of which caused the burning of] **a** [(building or structure referred to in § 18.2-79)]; **and**
- (2) That the defendant acted with malice; and**
- (3) That at the time there was a person therein; and**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty of arson of an occupied structure.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the first two elements of the crime but has not proved beyond a reasonable doubt that there was a person therein at the time the crime was committed, then you shall find the defendant guilty of arson of an unoccupied structure.

If you find the defendant guilty, you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements of the above crime, then you shall find the defendant not guilty.

Instruction No. P7.200(a) Burning Structure or Building Other Than Dwelling—Occupied

You have found the defendant guilty of the crime of arson of an occupied structure.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years; or**
- (2) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P7.200(b) Burning Structure or Building Other Than Dwelling—Unoccupied

You have found the defendant guilty of the crime of arson of an unoccupied structure.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 7.250 Burning Structure or Building Other Than Dwelling—Unoccupied

The defendant is charged with the crime of arson. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [burned; by use of an explosive device or substance destroyed in whole or in part; caused to be burned or destroyed; aided, counseled or procured the burning or destruction of; set fire to anything the burning of which caused the burning of; caused to be set on fire anything, the burning of which caused the burning of; aided, counseled or procured the setting fire to anything the burning of which caused the burning of] [(describe house, building, or structure referred to in Va. Code Ann. § 18.2-79)]; **and**
- (2) That the defendant acted with malice.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P7.250 Burning Structure or Building Other Than Dwelling—Unoccupied

You have found the defendant guilty of the crime of arson of an unoccupied structure.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 7.300 Burning Realty With Malice or Intent to Defraud—Person Therein

The defendant is charged with the crime of arson. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [burned; by use of an explosive device or substance destroyed, in whole or in part; caused to be burned or destroyed; aided, counseled or procured the burning or destruction of] a [; bridge; lock; dam; (identify building or structure of a type different from those addressed in other provisions set out in Chapter 5 of Article 1 of Title 18.2 of the Code of Virginia)]; and
- (2) That the defendant acted with [malice; intent to defraud (an insurance company; name other person)]; and
- (3) That at the time there was a person [therein; thereon].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty of arson of an occupied structure, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the first two elements of the crime but has not proved beyond a reasonable doubt that there was a person therein at the time the crime was committed; and, if you further find from the evidence beyond a reasonable doubt that the value of the [bridge; lock; dam; (identify building or structure of a type different from those addressed in other provisions set out in Chapter 5 of Article 1 of Title 18.2 of the Code of Virginia)] with the property therein was \$1,000 or more, then you shall find the defendant guilty of arson of an unoccupied structure, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the first two elements of the crime but has not proved beyond a reasonable doubt that there was a person therein at the time the crime was committed and that the value of the [bridge; lock; dam; (identify building or structure of a type different from those addressed in other provisions set out in Chapter 5 of Article 1 of Title 18.2 of the Code of Virginia)] with the property therein was \$1,000 or more; and, if you further find from the evidence, beyond a reasonable doubt, that the [bridge; lock; dam; (identify building or structure of a type different from those addressed in other provisions set out in Chapter 5 of Article 1 of Title 18.2 of the Code of Virginia)] with the property therein was of some value (there need be no proof of a minimum or specific value), you shall find the defendant guilty of the misdemeanor of arson of an unoccupied structure, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the first two elements of the crime or that the [bridge; lock; dam; (identify building or structure of a type different from those addressed in other provisions set out in Chapter 5 of Article 1 of Title 18.2 of the Code of Virginia)] with the property therein was of some value, then you shall find the defendant not guilty.

Instruction No. P7.300(a) Burning Realty With Malice or Intent to Defraud—Person Therein

You have found the defendant guilty of the crime of arson of an occupied structure.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years; or**
- (2) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P7.300(b) Burning Realty With Malice or Intent to Defraud—No Person Therein

You have found the defendant guilty of the crime of arson of an unoccupied structure.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P7.300(c) Burning Realty With Malice or Intent to Defraud (Misdemeanor)

You have found the defendant guilty of the crime of arson of an unoccupied structure.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 7.350 Burning Realty With Malice or Intent to Defraud—No Person Therein

The defendant is charged with the crime of arson. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [burned; by use of an explosive device or substance destroyed, in whole or in part; caused to be burned or destroyed; aided, counseled or procured the burning or destruction of] **a** [bridge; lock; dam; (identify building or structure of a type different from those addressed in other provisions set out in Chapter 5 of Article 1 of Title 18.2 of the Code of Virginia)]; **and**
- (2) That the defendant acted with** [malice; intent to defraud (an insurance company; name other person)]; **and**
- (3) That the value of the** [bridge; lock; dam; (identify building or structure of a type different from those addressed in other provisions set out in Chapter 5 of Article 1 of Title 18.2 of the Code of Virginia)], **with the property contained therein, was \$1,000 or more;**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, you shall find the defendant guilty of the felony of arson of an unoccupied structure, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the first two elements of the crime, but has not proved beyond a reasonable doubt that the value of the [bridge; lock; dam; (identify building or structure of a type different from those addressed in other provisions set out in Chapter 5 of Article 1 of Title 18.2 of the Code of Virginia)] **with the property therein was \$1,000 or more, then if you find that the** [bridge; lock; dam; (identify building or structure of a type different from those addressed in other provisions set out in Chapter 5 of Article 1 of Title 18.2 of the Code of Virginia)] **with the property therein was of some value (there need be no proof of a minimum or specific value), you shall find the defendant guilty of the misdemeanor of arson of an unoccupied structure, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].**

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the first two elements of the crime or that the [bridge; lock; dam; (identify building or structure of a type different from those addressed in other provisions set out in Chapter 5 of Article 1 of Title 18.2 of the Code of Virginia)] **with the property therein was of some value, then you shall find the defendant not guilty.**

Instruction No. P7.350(a) Burning Realty With Malice or Intent to Defraud—No Person Therein—Felony

You have found the defendant guilty of the crime of arson of an unoccupied structure.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P7.350(b) Burning Realty With Malice or Intent to Defraud—No Person Therein—Misdemeanor

You have found the defendant guilty of the crime of arson of an unoccupied structure.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 7.400 Burning Personal Property

The defendant is charged with the crime of arson. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [set fire to; burned; destroyed by an explosive device or substance; caused to be burned; caused to be destroyed by an explosive device or substance; aided, counseled or procured the burning of; aided, counseled or procured the destroying by an explosive device or substance of] [(identify item(s) of personal property); standing grain; (name other crop)]; **and**
- (2) That the defendant acted [with malice; with intent to defraud an insurance company; with intent to defraud (name other person)]; **and**
- (3) That the value of the [(identify item(s) of personal property); standing grain; (name of other crop)] was \$1,000 or more.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty of the felony of arson of personal property, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the first two elements of the crime, but has not proved beyond a reasonable doubt that the value of the thing [set fire to; burned; destroyed] was \$1,000 or more, then if you find that the thing [set fire to; burned; destroyed] was of some value (there need be no proof of a minimum or specific value), you shall find the defendant guilty of the misdemeanor of arson of personal property, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements of the crime or has failed to prove beyond a reasonable doubt that the thing [set fire to; burned; destroyed] was of some value, then you shall find the defendant not guilty.

Instruction No. P7.400(a) Burning Personal Property—Felony

You have found the defendant guilty of the crime of arson of personal property.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P7.400(b) Burning Personal Property—Misdemeanor

You have found the defendant guilty of the crime of arson of personal property.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 7.500 Burning Building or Structure While Unlawfully Therein With Intent to Commit Felony

The defendant is charged with the crime of arson. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [burned (name of building or structure); caused (name of building or structure) to be burned] **in whole or in part; and**
- (2) That at the time the defendant was in such** [building; structure] **unlawfully; and**
- (3) That the defendant intended to commit** (name of felony) **therein.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P7.500 Burning Building or Structure While Unlawfully Therein With Intent to Commit Felony

You have found the defendant guilty of the crime of arson.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 7.600 Threatening to Bomb or Damage Buildings, etc.

The defendant is charged with the crime of threatening to damage (describe place of assembly, building, structure or means of transportation threatened). **The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That the defendant made and communicated by any means to another a threat** [to bomb; to burn; to destroy; to damage in any manner]; **and**
- (2) That the defendant did so with unlawful intent; and**
- (3) That the damage threatened was to a** [place of assembly; building; structure; means of transportation].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P7.600 Threatening to Bomb or Damage Buildings, etc.

You have found the defendant guilty of the crime of threatening to damage (describe place of assembly, building, structure or means of transportation threatened).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 7.650 Communicating False Information

The defendant is charged with the crime of communicating false information about danger to (describe building, structure or means of transportation). The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant communicated by any means to another information as to the existence of any danger of [bombing; burning; destruction; damage]; and**
- (2) That the thing which the defendant reported as endangered was a [place of assembly; building; structure; means of transportation]; and**
- (3) That the defendant knew such information to be false.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P7.650 Communicating False Information

You have found the defendant guilty of the crime of communicating false information about danger to (describe building, structure or means of transportation).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 7.700 Possession of Fire Bomb Material, Explosive Materials or Devices

The defendant is charged with the crime of possessing material with which a fire bomb or explosive material or device can be made, with intent to manufacture a fire bomb or explosive material or device. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant possessed materials with which [fire bombs, explosive materials, or devices]; can be made; and**
- (2) That the defendant intended to manufacture [fire bombs, explosive materials, or devices].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P7.700 Possession of Fire Bomb Material, Explosive Materials or Devices

You have found the defendant guilty of the crime of possessing material with which a fire bomb or explosive material or device can be made with the intent to manufacture a fire bomb or explosive or device.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 7.750 Manufacturing, Transporting, Distributing, Possessing, or Using Fire Bomb or Explosive Material or Device

The defendant is charged with the crime of [manufacturing; knowingly and intentionally transporting; knowingly and intentionally distributing; knowingly and intentionally possessing; knowingly and intentionally using] [a fire bomb; an explosive material or device]. **The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That the defendant** [manufactured; transported; distributed; possessed; used] [a fire bomb; an explosive material or device]; **and**
- (2) That the defendant did so knowingly and intentionally.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P7.750 Manufacturing, Transporting, Distributing, Possessing, or Using Fire Bomb or Explosive Material or Device

You have found the defendant guilty of the crime of [manufacturing; knowingly and intentionally transporting; knowingly and intentionally distributing; knowingly and intentionally possessing; knowingly and intentionally using] [a fire bomb; an explosive material or device].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 8.100 Attempt—General Elements

The defendant is charged with the crime of attempted (name of crime). The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant intended to commit (name of crime); and**
- (2) That the defendant did a direct act toward the commission of the (name of crime) which amounted to the beginning of the actual commission of the (name of crime).**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P8.100 Attempt—General Elements

You have found the defendant guilty of the crime of attempted (name of crime).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 8.120 Attempt—Intent

The intent required to be proved in an attempted crime is the specific intent in the person's mind to commit the particular crime for which the attempt is charged. In determining whether the intent has been proved, you may consider the conduct of the person involved and all the circumstances revealed by the evidence.

Instruction No. 8.140 Attempt—Direct Act

The direct act required to be proved in an attempted crime is an act which shows a present intention to commit the crime. The act need not be the last act prior to the actual commission of the crime, but it must be more than mere preparation.

Instruction No. 8.160 Attempt—Failure to Commit Crime

It is not a defense to attempted (name of crime) **that** [the defendant voluntarily withdrew before actually committing the (name of crime); some other person or thing prevented (name of crime) from being committed].

Instruction No. 8.180 Attempt—Impossibility

It is no defense that it was impossible for the defendant to have committed the intended crime because of facts or circumstances unknown to him. It is sufficient if the defendant's actions would have resulted in the completed crime if the facts or circumstances had been as he believed them to be.

Instruction No. 8.500 Solicitation

The defendant is charged with the crime of solicitation to commit (name of crime). The Commonwealth must prove beyond a reasonable doubt that the defendant [commanded; entreated; attempted to persuade] another person to commit (name of crime), with the intent that the (name of crime) be committed.

If you find from the evidence that the Commonwealth has proved the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove the crime beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P8.500 Solicitation—General

You have found the defendant guilty of the crime of solicitation to commit (name of crime).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 9.100 Issuing Bad Check (Felony)

The defendant is charged with the crime of issuing a bad [check; draft; order for the payment of money]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [made; drew; uttered; delivered] a [check; draft; order for the payment of money] on a [bank; banking institution; trust company; depository]; and**
- (2) That the defendant knew at the time he acted that there were not sufficient [funds in; credit with] the [bank; banking institution; trust company; depository] for the payment of the [check; draft; order for the payment of money]; and**
- (3) That the defendant acted with intent to defraud; and**
- (4) That the [check; draft; order for the payment of money] was in the amount of \$1,000 or more; and**
- (5) That the [check; draft; order for the payment of money] was in payment as a present consideration [for goods or services].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P9.100 Issuing Bad Check (Felony)

You have found the defendant guilty of the crime of issuing a bad [check; draft; order for the payment of money].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 9.150 Issuing Two or More Bad Checks Within Ninety (90) Day Period (Felony)

The defendant is charged with the crime of issuing two or more bad [checks; drafts; orders for the payment of money] within a period of ninety (90) days. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [wrote; uttered; delivered] two or more [checks; drafts; orders for the payment of money] on the same account of a [bank; banking institution; trust company; depository]; and**
- (2) That each [check; draft; order for the payment of money] was made payable to the same [corporation; firm; person]; and**
- (3) That the defendant knew at each of the times he acted that there were not sufficient [funds in; credit with] the [bank; banking institution; trust company; depository] on which the [check; draft; order for the payment of money] was written to cover payment of the [check; draft; order for the payment of money]; and**
- (4) That each time the defendant acted with intent to defraud; and**
- (5) That the [checks; drafts; orders for the payment of money] were issued within a period of ninety (90) days; and**
- (6) That the [checks; drafts; orders for the payment of money] had an aggregate represented value of \$1,000 or more; and**
- (7) That each [check; draft; order for the payment of money] was in payment as a present consideration for goods or services.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P9.150 Issuing Two or More Bad Checks Within Ninety (90) Day Period (Felony)

You have found the defendant guilty of the crime of issuing two or more bad [checks; drafts; orders for the payment of money] within a period of ninety (90) days.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 9.200 Issuing Bad Check (Misdemeanor)

The defendant is charged with the crime of issuing a bad [check; draft; order for the payment of money]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [made; drew; uttered; delivered] a [check; draft; order for the payment of money] on a [bank; banking house; trust company; depository]; and**
- (2) That the defendant knew at the time he acted that there were not sufficient [funds in; credit with] the [bank; banking house, trust company; depository] for the payment of the [check; draft; order for the payment of money]; and**
- (3) That the defendant acted with intent to defraud; and**
- (4) That the [check; draft; order for the payment of money] was in payment as a present consideration [for goods or services].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P9.200 Issuing Bad Check (Misdemeanor)

You have found the defendant guilty of the crime of issuing a bad [check; draft; order for the payment of money].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 9.300 Inference of Intent— Notice to Maker

If the holder of a [check; draft; order for payment of money] sends a notice that such [check; draft; order for payment of money] has not been paid to the maker of a [check; draft; order for payment of money] by certified or registered mail:

- (1) to his last known address, evidenced by return receipt, and the holder is not paid within five days of receipt of such notice, or**
- (2) to the [written; printed] address shown on the face of the [check; draft; order for payment of money], with or without return receipt requested, and the holder is not paid within five days of the sending of such notice,**

you may, but are not required, to infer that the maker had the intent to defraud or had knowledge of insufficient [funds in; credit with] the [bank; banking institution; trust company; depository].

The notation [“not sufficient funds”; “uncollected funds”; “account closed”; “no account in this name;” “NSF”] or words of similar import attached to or stamped on a check which is returned by the bank is evidence that such notation is true.

Instruction No. 9.350 Inference of Intent—No Account

When the check is drawn on a bank in which the [maker; drawer] has no account, you may infer, but are not required to infer, that the check was issued with the intent to defraud.

Instruction No. 10.100 Use of Profane, Threatening, or Indecent Language Over Telephone, Etc.

The defendant is charged with the crime of using profane, threatening, or indecent language over a [telephone; wireless telecommunications device; citizens band radio]. The Commonwealth must prove beyond a reasonable doubt each of the elements of that crime:

- (1) That the defendant** [talked on; used; produced a visual or electronic message using] **a** [telephone; wireless telecommunications device; citizens band radio]; **and**
- (2) That in doing so, he** [used indecent, vulgar, profane, lewd, lascivious language that was obscene; made a suggestion or proposal of an obscene nature; threatened an illegal or immoral act]; **and**
- (3) That he did so with the intent to coerce, intimidate, or harass** (name of person).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P10.100 Use of Profane, Threatening, or Indecent Language Over Telephone, Etc.

You have found the defendant guilty of the crime of using profane, threatening, or indecent language over the [telephone; wireless telecommunications device; citizens band radio].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific amount of time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 10.200 Burning of Object With Intent to Intimidate—Private Property

The defendant is charged with the crime of burning an object on the private property of another without permission. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [burned; caused to be burned] an object; and**
- (2) That he did so on the private property of another without permission; and**
- (3) That he did so with the intent to intimidate any person or group of persons.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P10.200 Burning of Object With Intent to Intimidate—Private Property

You have found the defendant guilty of the crime of burning an object on the private property of another person without permission.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 10.220 Burning of Object With Intent to Intimidate—Highway or Public Place

The defendant is charged with the crime of burning an object [on a highway; in a public place] with the intent to intimidate any person or group of persons. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [burned; caused to be burned] an object; and**
- (2) That he did so [on a highway; in a public place]; and**
- (3) That he did so with the intent to intimidate any person or group of persons; and**
- (4) That the burning was done in a manner having a direct tendency to place another person in reasonable fear or apprehension of death or bodily injury.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P10.220 Burning of Object With Intent to Intimidate—Highway or Public Place

You have found the defendant guilty of the crime of burning an object [on a highway; in a public place].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 10.230 Public Place—Definition

A public place includes private property when the [(name and/or description of object); (name and/or description of symbol); noose] is displayed on private property and is used as a means to communicate it to the public and is visible to persons who are within the viewpoint of the communication.

Instruction No. 10.300 Placing a Swastika With Intent to Intimidate

The defendant is charged with the crime of placing a swastika [on a building or place used for religious worship; on a school, educational facility or community center owned or operated by a religious body]. **The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That the defendant** [placed; caused to be placed] **a swastika** [on a building or place used for religious worship; on a school, educational facility or community center owned or operated by a religious body]; **and**
- (2) That he did so with intent to intimidate another person or group of persons.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P10.300 Placing a Swastika With Intent to Intimidate

You have found the defendant guilty of the crime of placing a swastika [on a church, synagogue or other building or place used for religious worship; on a school, educational facility or community center owned or operated by a church or religious body].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 10.400(a) Unlawful Paramilitary Activity—Training, Teaching, or Demonstrating

The defendant is charged with the crime of unlawful paramilitary activity. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [taught; demonstrated] to any other person the [use; application; making] of any [firearm; explosive; incendiary device; technique capable of causing injury or death to persons]; and**
- (2) That he did so knowing, or having reason to know, or intending that the training acquired from such [teaching; demonstration] would be employed [for use in; in furtherance of] a civil disorder.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. 10.400(b) Unlawful Paramilitary Activity—Assembling for Training, Practice, or Instruction

The defendant is charged with the crime of unlawful paramilitary activity. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant assembled with one or more persons for the purpose of [training with; practicing with; being instructed in the use of] any [firearm; explosive; incendiary device; technique capable of causing injury or death to persons]; and**
- (2) That he did so with the intent to employ such training [for use in; in furtherance of] a civil disorder.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. 10.400(c) Unlawful Paramilitary Activity—Brandishing Firearm While Assembled to Intimidate

The defendant is charged with the crime of unlawful paramilitary activity. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [pointed, held, or brandished] a [firearm; air or gas operated weapon; any object similar in appearance], in such a manner as to reasonably induce fear in the mind of another of being shot or injured; and**
- (2) That the defendant did so while assembled with one or more persons; and**
- (3) That the defendant did so with the purpose of and intent to intimidate any person or group of persons.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P10.400 Unlawful Paramilitary Activity

You have found the defendant guilty of the crime of unlawful paramilitary activity.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 10.500 Causing Telephone or Other Device to Ring with Intent to Annoy— Emergency

The defendant is charged with the crime of causing a telephone used by emergency services personnel to ring with intent to annoy. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant caused a [telephone to ring; other device to signal] which was [owned; leased] for the purpose of receiving emergency communications by a [public; private] entity providing [fire; police; emergency medical] service; and**
- (2) That the defendant did so with intent to annoy, harass, hinder, or delay emergency personnel in the performance of their duties as such.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P10.500 Causing Telephone or Other Device to Ring with Intent to Annoy— Emergency

You have found the defendant guilty of the crime of causing a telephone or other device used by emergency services personnel to ring with intent to annoy.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 11.100 Offer of Pecuniary Benefit to Public Servant or Party Official

The defendant is charged with the crime of bribery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [offered to; conferred upon; agreed to confer upon] (name of recipient) **a pecuniary benefit; and**
- (2) That the pecuniary benefit was** [consideration for; to obtain; to influence] **the** [decision; opinion; recommendation; vote; exercise of official discretion] **of** (name of recipient) **as a** [public servant; party official].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P11.100 Offer of Pecuniary Benefit to Public Servant or Party Official

You have found the defendant guilty of the crime of bribery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 11.150 Offer of Benefit to Public Servant or Party Official: Judicial or Administrative Proceeding

The defendant is charged with the crime of bribery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [offered to; conferred upon; agreed to confer upon] (name of recipient) **a benefit; and**

(2) That the benefit was [consideration for; to obtain; to influence] **the** [decision; opinion; recommendation; vote; exercise of official discretion] **of** (name of recipient) **in** [a judicial; an administrative] **proceeding.**

[(2) That the benefit was consideration for the violation by (name of recipient) of a known legal duty as a [public servant; party official].]

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P11.150 Offer of Benefit to Public Servant or Party Official: Judicial or Administrative Proceeding

You have found the defendant guilty of the crime of bribery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 11.200 Acceptance of Pecuniary Benefit by Public Servant or Party Official

The defendant is charged with the crime of bribery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [accepted; agreed to accept] **from another a pecuniary benefit; and**
- (2) That the pecuniary benefit was** [offered; conferred; agreed to be conferred] [as consideration for; to obtain; to influence] **the defendant's** [decision; opinion; recommendation; vote; exercise of discretion] **as a** [public servant; party official].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P11.200 Acceptance of Pecuniary Benefit by Public Servant or Party Official

You have found the defendant guilty of the crime of bribery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 11.250 Acceptance of Benefit by Public Servant or Party Official: Judicial or Administrative Proceeding

The defendant is charged with the crime of bribery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [accepted; agreed to accept] **from another a benefit; and**

(2) That the benefit was [offered; conferred; agreed to be conferred] [as consideration for; to obtain; to influence] **the defendant's** [decision; opinion; recommendation; vote; exercise of official discretion] **in** [a judicial; an administrative] **proceeding.**

[(2) That the benefit was [offered; conferred; agreed to be conferred] [as consideration for; to obtain; to influence] the defendant's violation of a known legal duty as a [public servant; party official].]

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P11.250 Acceptance of Benefit by Public Servant or Party Official: Judicial or Administrative Proceeding

You have found the defendant guilty of the crime of bribery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 11.300 Solicitation of Pecuniary Benefit by Public Servant or Party Official

The defendant is charged with the crime of bribery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant solicited from another** [a pecuniary benefit; a promise of pecuniary benefit];
and
- (2) That the** [pecuniary benefit; promise of pecuniary benefit] **was** [consideration for; in exchange for] **the defendant's** [decision; opinion; recommendation; vote; exercise of discretion] **as a** [public servant; party official].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P11.300 Solicitation of Pecuniary Benefit by Public Servant or Party Official

You have found the defendant guilty of the crime of bribery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 11.350 Solicitation of Benefit by Public Servant or Party Official: Judicial or Administrative Proceeding

The defendant is charged with the crime of bribery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant solicited from another [a benefit; a promise of benefit]; **and**
(2) That the [benefit; promise of benefit] **was** [as consideration for; in exchange for] **the defendant's**
[decision; opinion; recommendation; vote; exercise of discretion] **in** [a judicial; an administrative]
proceeding.

[(2) That the [benefit; promise of benefit] was [as consideration for; in exchange for] the defendant's violation of a known legal duty as a [public servant; party official].]

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P11.350 Solicitation of Benefit by Public Servant or Party Official: Judicial or Administrative Proceeding

You have found the defendant guilty of the crime of bribery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 12.100 Common Law Burglary —Unarmed

The defendant is charged with the crime of burglary. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [without permission] broke and entered the dwelling house of another; and**
- (2) That he did so in the nighttime; and**
- (3) That he did so with the intent to commit [larceny; (name of felony)] therein.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P12.100 Common Law Burglary —Unarmed

You have found the defendant guilty of the crime of burglary.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years; or**
- (2) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 12.150 Common Law Burglary —Armed

The defendant is charged with the crime of burglary while armed. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [without permission] broke and entered the dwelling house of another; and**
- (2) That he did so in the nighttime; and**
- (3) That he did so with the intent to commit [larceny; (name of felony)] therein; and**
- (4) That at the time of his entry he was armed with a deadly weapon.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the elements of the crime, then you shall find the defendant guilty of burglary while armed [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first three elements of the crime as charged but you also find that the defendant was not armed with a deadly weapon at the time of entry, then you shall find the defendant guilty of burglary [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any of the other elements of the crime, then you shall find the defendant not guilty.

Instruction No. P12.150(a) Common Law Burglary—Armed

You have found the defendant guilty of the crime of burglary while armed.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Imprisonment for life or for a specific term, but not less than twenty (20) years; or**
- (2) Imprisonment for life or for a specific term, but not less than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P12.150(b) Common Law Burglary

You have found the defendant guilty of the crime of burglary.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years; or**
- (2) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 12.200 Statutory Burglary— With Intent to Commit Murder, Rape, Robbery, or Arson

The defendant is charged with the crime of statutory burglary. The Commonwealth must prove beyond a reasonable doubt both of the following elements of that crime:

(1) That the defendant [without permission]

[(a) in the nighttime entered without breaking];

[(i) a dwelling house or an adjoining, occupied outhouse; in any building permanently affixed to realty, or any ship, vessel or rivercraft or any railroad car, or any automobile, truck or trailer, if such automobile, truck or trailer is used as a dwelling or place of human habitation]; **OR**

[(b) in the daytime broke and entered;

(i) a dwelling house or an adjoining, occupied outhouse]; **OR**

[(c) in the daytime entered and concealed himself in;

(i) a dwelling house or an adjoining, occupied outhouse]; **OR**

[(d) at any time [breaks and enters; enters and conceals himself in];

(i) in any building permanently affixed to realty, or any ship, vessel or rivercraft or any railroad car, or any automobile, truck or trailer, if such automobile, truck or trailer is used as a dwelling or place of human habitation;] **and**

(2) That he did so with the intent to commit [murder; rape; robbery; arson].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P12.200 Statutory Burglary— With Intent to Commit Murder, Rape, Robbery, or Arson

You have found the defendant guilty of the crime of statutory burglary.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years; or**
- (2) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 12.220 Statutory Burglary— With Intent to Commit Larceny or Felony Other Than Murder, Rape, Robbery, or Arson

The defendant is charged with the crime of statutory burglary. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [without permission]

[(a) in the nighttime entered without breaking];

[(i) a dwelling house or an adjoining, occupied outhouse; in any building permanently affixed to realty, or any ship, vessel or rivercraft or any railroad car, or any automobile, truck or trailer, if such automobile, truck or trailer is used as a dwelling or place of human habitation]; **OR**

[(b) in the daytime broke and entered;

(i) a dwelling house or an adjoining, occupied outhouse]; **OR**

[(c) in the daytime entered and concealed himself in;

(i) a dwelling house or an adjoining, occupied outhouse]; **OR**

[(d) at any time [breaks and enters; enters and conceals himself in];

(i) in any building permanently affixed to realty, or any ship, vessel or rivercraft or any railroad car, or any automobile, truck or trailer, if such automobile, truck or trailer is used as a dwelling or place of human habitation;] **and**

(2) That he did so with the intent to commit [larceny; (name of felony other than murder, rape, robbery, or arson)]

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P12.220 Statutory Burglary— With Intent to Commit Larceny or Felony Other Than Murder, Rape, Robbery, or Arson

You have found the defendant guilty of the crime of statutory burglary.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 12.230 Statutory Burglary— With Intent to Commit Assault and Battery

The defendant is charged with the crime of statutory burglary. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [without permission]

[(a) in the nighttime broke and entered the dwelling house of another]; **OR**

[(b) in the nighttime entered without breaking];

[(i) a dwelling house or an adjoining, occupied outhouse]; **OR**

[(ii) in any building permanently affixed to realty, or any ship, vessel or rivercraft or any railroad car, or any automobile, truck or trailer, if such automobile, truck or trailer is used as a dwelling or place of human habitation]; **OR**

[(c) in the daytime broke and entered;

(i) a dwelling house or an adjoining, occupied outhouse]; **OR**

[(d) in the daytime entered and concealed himself in;

(i) a dwelling house or an adjoining, occupied outhouse]; **OR**

[(e) at any time [breaks and enters; enters and conceals himself in];

(i) in any building permanently affixed to realty, or any ship, vessel or rivercraft or any railroad car, or any automobile, truck or trailer, if such automobile, truck or trailer is used as a dwelling or place of human habitation;] **and**

(2) That he did so with the intent to commit assault and battery.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P12.230 Statutory Burglary— With Intent to Commit Assault and Battery

You have found the defendant guilty of the crime of statutory burglary.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 12.240 Statutory Burglary— Breaking and Entering Dwelling House With Intent to Commit Misdemeanor Other Than Trespass or Assault and Battery

The defendant is charged with the crime of statutory burglary. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [without permission] broke and entered a dwelling house while it was occupied; and**
- (2) That he did so with intent to commit** (name of misdemeanor other than trespass or assault and battery).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until the verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P12.240 Statutory Burglary— Breaking and Entering Dwelling House With Intent to Commit Misdemeanor Other Than Trespass or Assault and Battery

You have found the defendant guilty of the crime of statutory burglary.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 12.300 Entering Bank While Armed With a Deadly Weapon With Intent to Commit Larceny

The defendant is charged with the crime of entering a bank while armed with a deadly weapon with the intent to commit larceny. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant entered a [bank; savings and loan association; credit union] while armed with a deadly weapon; and**
- (2) That he did so with intent to steal money, bonds, notes or other evidence of debt.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P12.300 Entering Bank While Armed With a Deadly Weapon With Intent to Commit Larceny

You have found the defendant guilty of the crime of entering a bank while armed with the intent to commit larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Imprisonment for life or for a specific term, but not less than twenty (20) years; or**
- (2) Imprisonment for life or for a specific term, but not less than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 12.400 Possession of Burglary Tools

The defendant is charged with the crime of possession of burglary [tools; implements; outfit] with intent to commit [burglary; robbery; larceny]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant had in his possession any [tools; implements; outfit] which might be used for purposes of [burglary; robbery; larceny]; and**
- (2) That he intended to use [these tools; these implements; this outfit] to commit [burglary; robbery; larceny].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P12.400 Possession of Burglary Tools

You have found the defendant guilty of the crime of possession of burglary [tools; implements; outfit] with intent to commit [burglary; robbery; larceny].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 12.500 Burglary—Possession Inference

If you believe from the evidence that [a dwelling house; an adjoining, occupied outhouse; an office; a shop; a manufactured home; a storehouse; a warehouse; a banking house; a house; a ship; a vessel; a river craft; a railroad car; an automobile used as a dwelling; a truck used as a dwelling; a trailer used as a dwelling; a building permanently affixed to realty] has been broken into and goods stolen therefrom and that the breaking and entering and theft of the goods were committed at the same time, by the same person or persons, then proof of exclusive possession by the defendant of recently stolen goods is a circumstance from which you may reasonably infer that the defendant was the burglar unless, from all the evidence, you have a reasonable doubt as to whether the defendant was the burglar.

You may not find from the possession of recently stolen goods alone that the defendant is guilty of [burglary; statutory burglary].

The term “recently” is a relative term. The longer the period of time since the theft, the more doubtful becomes the inference which may reasonably be drawn from the defendant’s possession of the goods stolen.

“Exclusive possession” must be actual knowing possession.

[“Exclusive possession” may be joint with another or others but it must be under circumstances which cause you to believe that the defendant has knowing joint possession. It is not shown when the property is found on premises owned or occupied by others as well as the defendant, or in a place where others had equal opportunity or right of access, unless there is a further showing of actual knowing possession.]

Instruction No. 12.510 Inference of Criminal Intent

When the defendant unlawfully enters [a dwelling house; an adjoining, occupied outhouse; an office; a shop; a manufactured home; a storehouse; a warehouse; a banking house; a house; a ship; a vessel; a river craft; a railroad car; an automobile used as a dwelling; a truck used as a dwelling; a trailer used as a dwelling; a building permanently affixed to realty], **you may infer that the entry was made with criminal intent. The specific criminal intent with which such entry is made may be inferred from the surrounding facts and circumstances, unless, from all the evidence, you have a reasonable doubt as to whether the defendant had such specific criminal intent.**

Instruction No. 12.600 Breaking—Definition

Breaking, as used in these instructions, is the use of some force, however slight, to gain entry. [Breaking may be actual or constructive. Actual breaking requires the use of physical force, however slight. Constructive breaking requires the use of threats, fraud, trickery, conspiracy, or other evil conduct designed to prompt the victim to let the defendant inside.]

Instruction No. 12.610 Entering—Definition

Entering occurs whenever any part of a person's body comes within the premises.

Instruction No. 12.620 Dwelling House— Definition

A dwelling house is a building used for habitation. Habitation or occupancy includes not only sleeping, but other dwelling-related activities such as preparing and consuming meals, bathing, and other day-to-day activities traditionally associated with habitation. The Commonwealth does not need to prove that the building is inhabited at regular intervals.

Instruction No. 12.630 Implement—Definition

You are instructed that an implement is [a device, apparatus, instrument, or equipment used in a trade, vocation, or profession; an object used in performing an operation or carrying on work, such as an instrument or apparatus necessary in the practice of a vocation or profession].

Instruction No. 12.640 Tool—Definition

You are instructed that a tool is [an instrument, such as a hammer or saw, used or worked by hand; an implement or object used in performing an operation or carrying on work of any kind].

Instruction No. 13.100 Computer Fraud— General

The defendant is charged with the crime of computer fraud. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [used a (computer; computer network) when the defendant knew or reasonably should have known that the defendant had no right, agreement, or permission to use the (computer; computer network), or that the defendant acted in a manner knowingly exceeding such right, agreement, or permission]; **and**
- (2) That the defendant used the** [computer; computer network] [to obtain property or services by false pretenses; to embezzle; to commit larceny; to convert the property of another]; **and**
- (3) That the value of the property or services obtained was \$1,000 or more.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of the crime of computer fraud, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged, but has not proved beyond a reasonable doubt that the value of the property or services obtained by computer fraud was \$1,000 or more, then if you find beyond a reasonable doubt that the property or services obtained by the computer fraud was of some value (there need be no proof of a minimum or specific value), you shall find the defendant guilty of the misdemeanor of computer fraud [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements of the crime or has failed to prove beyond a reasonable doubt that the property or services obtained was of some value, then you shall find the defendant not guilty.

Instruction No. P13.100(a) Computer Fraud— General (Felony)

You have found the defendant guilty of the crime of computer fraud.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P13.100(b) Computer Fraud— General (Class 1 Misdemeanor)

You have found the defendant guilty of the misdemeanor of computer fraud.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 13.200 Computer Usage— Definition

A person uses a computer or computer network when [he; she] causes or attempts to cause a computer or computer network to perform or stop performing computer operations.

Instruction No. 13.300 Computer Trespass and Lesser Included Offenses

The defendant is charged with the crime of computer trespass. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [temporarily or permanently removed, halted, or disabled computer data, computer programs or computer software from a computer or computer network; caused a computer to malfunction, regardless of how long the malfunction persisted; altered, disabled, or erased any computer data, computer programs, or computer software; used a computer or computer network to effect the creation or alteration of a financial instrument or of an electronic transfer of funds; used a computer or computer network to cause physical injury to the property of another; used a computer network to make or cause to be made an unauthorized copy in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by or produced by a computer or computer network]; **and**
- (2) That the defendant acted with malice, or through intentionally deceptive means and without authority; and**
- (3) (a) That the value of the property damaged was \$1,000 or more and the defendant acted with malicious intent; or (b) That the defendant did so for the purposes of affecting a computer that is exclusively** [for the use of; used by; used for] [the Commonwealth or any local government within the Commonwealth or any department or agency thereof; a provider of telephone, including wireless or voice over Internet protocol, oil, electric, gas, sewer, wastewater, or water service to the public].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of the crime of felony computer trespass, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged but has failed to prove that the value of the property damaged was \$1,000 or more or that the defendant did so for the purposes of affecting a computer that is exclusively for the use of, used by, or used for the Commonwealth or public provider, then you shall find the defendant guilty of the misdemeanor of computer trespass, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements of the crime, then you shall find the defendant not guilty.

Instruction No. P13.300(a) Computer Trespass (Felony)

You have found the defendant guilty of the crime of computer trespass.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P13.300(b) Computer Trespass (Class 1 Misdemeanor)

You have found the defendant guilty of the misdemeanor of computer trespass.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 13.310 Computer Trespass— Recording Keystrokes (Felony)

The defendant is charged with the crime of computer trespass. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [installed; caused to be installed; collected information through] computer software that records all or a majority of the keystrokes made on the computer of (name of computer's owner); and

(2) That the defendant acted with malicious intent.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P13.310 Computer Trespass— Recording Keystrokes (Felony)

You have found the defendant guilty of the crime of computer trespass.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specified amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 13.320 Computer Trespass— Recording Keystrokes (Misdemeanor)

The defendant is charged with the crime of computer trespass. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [installed; caused to be installed; collected information through] computer software that records all or a majority of the keystrokes made on the computer of (name of computer's owner);**
- (2) That the defendant acted without the authorization of (name of computer owner); and**
- (3) That the defendant used intentionally deceptive means.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P13.320 Computer Trespass— Recording Keystrokes (Misdemeanor)

You have found the defendant guilty of the crime of computer trespass.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specified amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 13.330 Computer Trespass— Installing Software (Felony)

The defendant is charged with the crime of computer trespass. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [installed; caused to be installed] on the computer of (name of computer's owner) computer software for the purpose of [taking control of the computer so that it can cause damage to another computer; disabling or disrupting the ability of the computer to share or transmit instructions or data to (other computers; any related computer equipment or devices, including but not limited to printers, scanners, or fax machines)]; and**
- (2) That the defendant acted with malice, or through intentionally deceptive means and without authority; and**
- (3) (a) That the value of the property damaged was \$1,000 or more and the defendant acted with malicious intent; or (b) That the defendant did so for the purposes of affecting a computer that is exclusively [for the use of; used by; used for] [the Commonwealth or any local government within the Commonwealth or any department or agency thereof; a provider of telephone, including wireless or voice over Internet protocol, oil, electric, gas, sewer, wastewater, or water service to the public].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of the felony of computer trespass, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the first two elements of the crime as charged but has failed to prove that the value of the property damaged was \$1,000 or more, or that the defendant did so for the purposes of affecting a computer that is exclusively for the use of, used by, or used for the Commonwealth or public provider, then you shall find the defendant guilty of the misdemeanor of computer trespass [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements of the crime, then you shall find the defendant not guilty.

Instruction No. P13.330(a) Computer Trespass —Installing Software (Felony)

You have found the defendant guilty of the crime of computer trespass.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P13.330(b) Computer Trespass —Installing Software (Class 1 Misdemeanor)

You have found the defendant guilty of the misdemeanor of computer trespass.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 13.340 Computer Trespass— Installing Software on Five or More Computers

The defendant is charged with the crime of computer trespass. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [installed; caused to be installed] on the computer of (name of computer's owner) computer software for the purpose of [taking control of the computer so that it can cause damage to another computer; disabling or disrupting the ability of the computer to share or transmit instructions or data to (other computers; any related computer equipment or devices, including but not limited to printers, scanners, or fax machines)]; and**
- (2) That the defendant acted with malicious intent, or through intentionally deceptive means and without authority; and**
- (3) That the defendant installed computer software on more than five computers of (name of computer's owner) with malicious intent.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of the felony of computer trespass, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the first and second elements of the crime as charged but has failed to prove that the defendant installed computer software on more than five computers with malicious intent, then you shall find the defendant guilty of the misdemeanor of computer trespass [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first and second elements of the crime, then you shall find the defendant not guilty.

Instruction No. P13.340(a) Computer Trespass —Installing Software on Five or More Computers (Felony)

You have found the defendant guilty of the crime of computer trespass.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P13.340(b) Computer Trespass —Installing Software on Five or More Computers (Class 1 Misdemeanor)

You have found the defendant guilty of the misdemeanor of computer trespass.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 13.400 Computer Invasion of Privacy

The defendant is charged with the crime of computer invasion of privacy. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant used a [computer; computer network] to intentionally examine any [employment information; salary information; credit information; financial information; identifying information such as (social security number; driver's license number; bank account number; credit or debit card number; personal identification number (PIN); electronic identification codes)] relating to any other person; and**
- (2) That the defendant used the [computer; computer network], to examine the information after the time at which the defendant knew or should have known that the defendant [had no right, agreement or permission to use the (computer; computer network); acted in a manner knowingly exceeding any right, agreement or permission to use the (computer; computer network)] to view the information displayed; and**
- (3)**
 - (a) That the defendant violated this section after having been previously convicted of computer invasion of privacy or any substantially similar law of another state or the United States; or**
 - (b) That the defendant sold or distributed such information to another; or**
 - (c) That the defendant used such information in the commission of another crime.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of the felony of computer invasion of privacy, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged but has failed to prove [that the defendant violated this section after having been previously convicted of computer invasion of privacy or any substantially similar law of another state or the United States; that the defendant sold or distributed such information to another; that the defendant used such information in the commission of another crime], then you shall find the defendant guilty of the misdemeanor of computer invasion of privacy [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements of the crime, then you shall find the defendant not guilty.

Instruction No. P13.400(a) Computer Invasion of Privacy (Felony)

You have found the defendant guilty of the crime of computer invasion of privacy.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P13.400(b) Computer Invasion of Privacy (Class 1 Misdemeanor)

You have found the defendant guilty of the crime of computer invasion of privacy.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 13.500 Harassment by Computer

The defendant is charged with the crime of harassment by computer. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant used a [computer; computer network] to [to communicate obscene language; make any suggestion or proposal of an obscene nature; threaten any illegal or immoral act]; and**
(2) That the defendant did so with the intent to [coerce; intimidate; harass] (name of person).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P13.500 Harassment by Computer

You have found the defendant guilty of the misdemeanor of harassment by computer.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 13.600 Fraud by Electronic Communication

The defendant is charged with the crime of perpetrating a fraud by electronic communication. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant maliciously sent an electronically transmitted communication containing a false representation; and**
- (2) That the defendant did so with the intent to cause another person to spend money; and**
- (3) That such false representation caused such person to spend money.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P13.600 Fraud by Electronic Communication

You have found the defendant guilty of the misdemeanor of fraud by electronic communication.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 13.700 Theft of Computer Services

The defendant is charged with the crime of theft of computer services. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant willfully obtained computer services; and**
- (2) That when the defendant obtained the services the defendant knew or reasonably should have known that the defendant had no right, agreement or permission [the defendant acted in a manner knowingly exceeding such right, agreement or permission] to obtain these computer services; and**
- (3) That the value of the services obtained was \$2,500 or more.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of the felony of theft of computer services [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged but has failed to prove that the value of the services obtained was \$2,500 or more, then you shall find the defendant guilty of the misdemeanor of theft of computer services [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements of the crime, then you shall find the defendant not guilty.

Instruction No. P13.700(a) Theft of Computer Services (Felony)

You have found the defendant guilty of the crime of theft of computer services.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P13.700(b) Theft of Computer Services (Class 1 Misdemeanor)

You have found the defendant guilty of the misdemeanor of theft of computer services.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 14.100 Conspiracy—General

The defendant is charged with the crime of conspiracy. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant entered into an agreement with one or more other persons; and**
- (2) That the agreement was that they were to commit (name of felony); and**
- (3) That both the defendant and [the other party; at least one other party] to the agreement intended to commit (name of felony).**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P14.100 Conspiracy—General

You have found the defendant guilty of the crime of conspiracy.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 14.150 Conspiracy Agreement Inferred from Acts or Conduct

The existence of an agreement may be inferred from the actions or conduct of the parties.

Instruction No. 14.200 Completion of Crime Not Necessary

It is not necessary that the defendant commit (name of crime) or attempt to commit (name of crime) to be guilty of the crime of conspiracy.

Instruction No. 14.220 Two-Party Minimum

A conspiracy cannot exist unless criminal intent is shared by at least two people.

Instruction No. 14.260 Withdrawal or Change of Mind

Withdrawal from the agreement or change of mind is not a defense to the crime of conspiracy.

Instruction No. 14.500 Conspiracy to Rig a Government Bid

The defendant is charged with the crime of conspiracy to rig a government bid. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant and one or more other persons intentionally entered into an agreement [to rig; to alter; to manipulate] a bid; and**
- (2) That the bid was submitted to [the Commonwealth of Virginia; (name of governmental unit of Commonwealth of Virginia)]; and**
- (3) That the bid was for the purpose [of allocating purchases or sales to or among persons; of raising or otherwise fixing the prices of the goods or services; of excluding other persons from dealing with [the Commonwealth; (name of governmental unit of Commonwealth)]].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P14.500 Conspiracy to Rig a Government Bid

You have found the defendant guilty of the crime of conspiracy to rig a government bid.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 15.100 Contempt of Court— General

The defendant is charged with contempt of court. Contempt of court is an act in disrespect of the court or its process, or an act that tends to impede, embarrass, or obstruct the court in the discharge of its duties. It is disobedience of any lawful command of the court, or conduct that despises or scorns the authority, justice, or dignity of the court. The Commonwealth must prove beyond a reasonable doubt that the defendant intentionally, willfully, or recklessly acted in such a manner as to constitute contempt.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt that the defendant intentionally acted in such a manner as to constitute contempt of court, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant intentionally acted in such a manner as to constitute contempt of court, then you shall find the defendant not guilty.

Instruction No. P15.100 Contempt of Court— General

The defendant has been found in contempt of court for misbehavior in the presence of the court. Specifically, the defendant intentionally or willfully or recklessly (insert specifics of contempt). You shall fix his punishment. The punishment shall be a fine of a fixed amount not more than \$500 or it shall be a fixed period of imprisonment not more than six (6) months.

Instruction No. P15.200 Contempt of Court— Penalty

You have found the defendant guilty of contempt.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than (specify applicable period); or**
- (2) A fine of a specific amount, but not more than (specify applicable amount); or**
- (3) Confinement in jail for a specific time, but not more than (specify applicable period), and a fine of a specific amount, but not more than (specify applicable amount).**

Instruction No. 16.100 Credit Card Theft— General

The defendant is charged with the crime of credit card theft. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [took; obtained; withheld] **a** [credit card; credit card number] **from the** [person; possession; custody; control] **of** (name of person); **and**
- (2) That the** [taking; obtaining; withholding; receiving] **was without the consent of the cardholder.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P16.100 Credit Card Theft— General

You have found the defendant guilty of the crime of credit card theft.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 16.150 Credit Card Theft— Receiving Stolen, Mislaid or Lost Credit Card

The defendant is charged with the crime of credit card theft. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant received a [credit card; credit card number] from another knowing that it had been [taken; obtained; withheld] from the [person; possession; custody; control] of (name of person); and [(1) That the defendant received a [credit card; credit card number] knowing the same to have been [lost; mislaid; delivered under a mistake as to the [identity; address] of the cardholder] and retained possession; and]

(2) That the receiving was without the consent of the cardholder; and

(3) That the receiving was with intent [to use it; to sell it; to transfer it to a person other than the issuer or the cardholder].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P16.150 Credit Card Theft— Receiving Stolen, Mislaid or Lost Credit Card

You have found the defendant guilty of the crime of credit card theft.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 16.200 Credit Card Forgery

The defendant is charged with the crime of credit card forgery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant forged [a paper; an electronic] form evidencing a purchase of [goods; services; something of value] from a merchant through the use of a credit card; and**
- (2) That the defendant was not [the cardholder; a person authorized by him to execute that form]; and**
- (3) That the defendant intended to defraud the issuer.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P16.200 Credit Card Forgery

You have found the defendant guilty of the crime of credit card forgery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 16.300 Credit Card Fraud— Intent to Use, Sell or Transfer

The defendant is charged with the crime of credit card fraud. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [took; obtained; withheld] a [credit card; credit card number] **from the** [person; possession; custody; control] **of** (name of person); **and**

[(1) That the defendant received a [credit card; credit card number] from another knowing that it had been [taken; obtained; withheld] from the [person; possession; custody; control] of (name of person); and]

[(1) That the defendant received a [credit card; credit card number] knowing the same to have been [lost; mislaid; delivered under a mistake as to the [identity; address] of the cardholder] and retained possession; and]

(2) That the [taking; obtaining; withholding; receiving; retaining] **was with intent** [to use it; to sell it; to transfer it to a person other than the issuer or the cardholder]; **and**

(3) That the (taking; obtaining; withholding; receiving; retaining) **was without the consent of the cardholder; and**

(4) That the defendant used the [credit card; credit card number] **for the purpose of obtaining money, goods, services or anything else of value; and**

(5) That the defendant used the [credit card; credit card number] **with the intent to defraud any person; and**

(6) That the value of all money, goods, services and other things of value obtained by the defendant in any six (6) month period exceeded \$1,000.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of felony credit card fraud, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first five elements of the crime as charged but you do not find beyond a reasonable doubt that the value of all money, goods, services and other things of value obtained by the defendant in any six (6) month period exceeded \$1,000, and if you find beyond a reasonable doubt that such items were of some value (there need be no proof of a minimum or specific value), then you shall find the defendant guilty of misdemeanor credit card fraud, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the first five elements of the crime, or that such items were of some value, then you shall find the defendant not guilty.

Instruction No. P16.300(a) Credit Card Fraud —Intent to Use, Sell or Transfer (Felony)

You have found the defendant guilty of the crime of credit card fraud.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P16.300(b) Credit Card Fraud —Intent to Use, Sell or Transfer (Misdemeanor)

You have found the defendant guilty of the crime of credit card fraud.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 16.305 Credit Card Fraud— Expired or Revoked Card or Number

The defendant is charged with the crime of credit card fraud. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant knew a [credit card; credit card number] [had expired; had been revoked]; and**
- (2) That the defendant used the [credit card; credit card number] for the purpose of obtaining money, goods, services or anything else of value; and**
- (3) That the defendant used the [credit card; credit card number] with the intent to defraud any person; and**
- (4) That the value of all money, goods, services and other things of value obtained by the defendant in any six (6) month period exceeded \$1,000.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty of felony credit card fraud, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first three elements of the crime, but you do not find beyond a reasonable doubt that the value of all money, goods, services and other things of value obtained by the defendant in any six (6) month period exceeded \$1,000, and if you find beyond a reasonable doubt that such items were of some value (there need be no proof of a minimum or specific value), then you shall find the defendant guilty of misdemeanor credit card fraud, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has failed to prove beyond a reasonable doubt any of the first three elements of the crime, or that such items were of some value, then you shall find the defendant not guilty.

Instruction No. P16.305(a) Credit Card Fraud —Expired or Revoked Card or Number (Felony)

You have found the defendant guilty of the crime of credit card fraud.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P16.305(b) Credit Card Fraud —Expired or Revoked Card or Number (Misdemeanor)

You have found the defendant guilty of the crime of credit card fraud.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 16.310 Credit Card Fraud— False Representation

The defendant is charged with the crime of credit card fraud. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant represented that he was the holder of a [credit card; credit card number] (describe issuer, card number, etc.) issued to (name of person) as cardholder; and**
- (2) That such representation was without the consent of the cardholder; and**
- (3) That such representation was made with the intent to defraud any person; and**
- (4) That by virtue of such representation the defendant obtained money, goods, services or anything else of value; and**
- (5) That the value of all money, goods, services and other things of value obtained by the defendant in any six (6) month period exceeded \$1,000.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty of felony credit card fraud, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first four elements of the crime, but you do not find beyond a reasonable doubt that the value of all money, goods, services and other things of value obtained by the defendant in any six (6) month period exceeded \$1,000, and if you find beyond a reasonable doubt that such items were of some value (there need be no proof of a minimum or specific value), then you shall find the defendant guilty of misdemeanor credit card fraud, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has failed to prove beyond a reasonable doubt any of the first four elements of the crime, or that such items were of some value, then you shall find the defendant not guilty.

Instruction No. P16.310(a) Credit Card Fraud —False Representation (Felony)

You have found the defendant guilty of the crime of credit card fraud.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P16.310(b) Credit Card Fraud —False Representation (Misdemeanor)

You have found the defendant guilty of the crime of credit card fraud.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 16.320 Credit Card Fraud— Obtaining Cash Advance

The defendant is charged with the crime of credit card fraud. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant obtained money from the issuer of a [credit card; credit card number]; and**
- (2) That he obtained the money [by use of an unmanned device of the issuer; through a person other than the issuer]; and**
- (3) That he knew when he obtained the money that the advance would exceed his available credit and any available balances held by the issuer; and**
- (4) That he obtained the money with the intent to defraud any person; and**
- (5) That the value of all money obtained by the defendant in any six (6) month period exceeded \$1,000.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty of felony credit card fraud, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first four elements of the crime, but you do not find beyond a reasonable doubt that the value of all money obtained by the defendant in any six (6) month period exceeded \$1,000, then you shall find the defendant guilty of misdemeanor credit card fraud, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has failed to prove beyond a reasonable doubt any of the first four elements of the crime, or that some value was obtained, then you shall find the defendant not guilty.

Instruction No. P16.320(a) Credit Card Fraud —Obtaining Cash Advance (Felony)

You have found the defendant guilty of the crime of credit card fraud.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P16.320(b) Credit Card Fraud —Obtaining Cash Advance (Misdemeanor)

You have found the defendant guilty of the crime of credit card fraud.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 17.100 Damage to Realty or Personalty (Felony)

The defendant is charged with the crime of intentionally damaging property. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant intentionally [damaged; destroyed; defaced; removed without the intent to steal; broke down] [property which was not his own; (type of monument, memorial, or tree described in Va. Code Ann. § 18.2-137(A))]; and
- (2) That the [value of; damage to] the property was \$1,000 or more.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the first element of the crime as charged but has not proved [a value; damage] of \$1,000 or more, you shall find the defendant guilty of misdemeanor damaging property [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant intentionally damaged [destroyed; defaced; removed without the intent to steal; broke down] [property which was not his own] [type of monument, memorial, or tree], but that the Commonwealth has proved beyond a reasonable doubt that the defendant has unlawfully done so, then you shall find the defendant guilty of unlawfully damaging property [and you shall fix his punishment at a fine of a specific amount, but not more than \$500].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant either intentionally or unlawfully damaged the property, then you shall find the defendant not guilty.

Instruction No. P17.100 Damage to Realty or Personalty (Felony)

You have found the defendant guilty of the crime of intentionally damaging property.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
 - (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
 - (3) A fine of a specific amount, but not more than \$2,500; or**
 - (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**
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Instruction No. 18.100 Discharging Firearms Within Occupied Building

The defendant is charged with the crime of discharging a firearm within an occupied building. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant discharged a firearm within a building occupied by one or more persons; and**
- (2) That the firearm was discharged in such a manner as to endanger the life or lives of such person or persons; and**
- (3) That the act was done with malice.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of maliciously discharging a firearm within an occupied building [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged, but that the act was done unlawfully and not maliciously, then you shall find the defendant guilty of unlawfully discharging a firearm within an occupied building [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.100(a) Discharging Firearms Within Occupied Building (Malice)

You have found the defendant guilty of the crime of maliciously discharging a firearm within an occupied building.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P18.100(b) Discharging Firearms Within Occupied Building (Without Malice)

You have found the defendant guilty of the crime of unlawfully discharging a firearm within an occupied building.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.200 Shooting/Throwing at Occupied Building

The defendant is charged with the crime of [shooting at; throwing a missile at or against] an occupied building. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [shot at; threw a missile at or against] a building occupied by one or more persons; and
- (2) That the life or lives of such person or persons may have been put in peril; and
- (3) That the act was done with malice.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of maliciously [shooting at; throwing a missile at or against] an occupied building [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged, but that the act was done unlawfully, and not maliciously, then you shall find the defendant guilty of unlawfully [shooting at; throwing a missile at or against] an occupied building [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.200(a) Shooting/Throwing at Occupied Building (Malice)

You have found the defendant guilty of the crime of maliciously [shooting at; throwing a missile at or against] an occupied building.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P18.200(b) Shooting/Throwing at Occupied Building (Without Malice)

You have found the defendant guilty of the crime of unlawfully [shooting at; throwing a missile at or against] an occupied building.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.300 Shooting/Throwing at Occupied Vehicle

The defendant is charged with the crime of [shooting at; throwing a missile at or against] an occupied [vehicle, train, vessel or watercraft]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [shot at; threw a missile at or against] a [vehicle, train, vessel or watercraft]; and**
- (2) That such [vehicle, train, vessel or watercraft], was occupied by one or more persons; and**
- (3) That as a result, the life of a person in such [vehicle, train, vessel or watercraft] may have been put in peril; and**
- (4) That the act was done with malice.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of maliciously [shooting at; throwing a missile at or against] an occupied [vehicle, train, vessel or watercraft] [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first three elements of the crime as charged, but that the act was done unlawfully and not maliciously, then you shall find the defendant guilty of unlawfully [shooting at; throwing a missile at or against] an occupied [vehicle, train, vessel or watercraft] [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the first three elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.300(a) Shooting/Throwing at Occupied Vehicle (Malice)

You have found the defendant guilty of the crime of maliciously [shooting at; throwing a missile at or against] **an occupied** [vehicle; train; vessel or watercraft].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P18.300(b) Shooting/Throwing at Occupied Vehicle (Without Malice)

You have found the defendant guilty of the crime of unlawfully [shooting at; throwing a missile at or against] an occupied [vehicle; train; vessel or watercraft].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.350 Shooting From Vehicle

The defendant is charged with the crime of shooting from a vehicle. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant intentionally discharged a firearm; and**
- (2) That the defendant did so while in or on a motor vehicle; and**
- (3) That the defendant thereby created a risk of injury or death of another person or caused another person to have a reasonable apprehension of injury or death.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.350 Shooting From Vehicle

You have found the defendant guilty of the crime of shooting from a vehicle.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.400 Possession or Use of Machine Gun for Crime of Violence

The defendant is charged with the crime of [using; possessing] a machine gun in [a crime; an attempted crime] of violence. The Commonwealth must prove beyond a reasonable doubt that the defendant [used; possessed] a machine gun in the [commission; attempted commission] of the crime of (name of crime listed in Va. Code Ann. § 18.2-288(2)).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove the crime beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P18.400 Possession or Use of Machine Gun for Crime of Violence

You have found the defendant guilty of the crime of [using; possessing] a machine gun in [a crime; an attempted crime] of violence.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Imprisonment for life or for a specific term, but not less than twenty (20) years; or**
- (2) Imprisonment for life or for a specific term, but not less than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 18.420 Machine Gun— Definition

A machine gun is any weapon which shoots or is designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger.

Instruction No. 18.500 Possession or Use of “Sawed-Off” Shotgun for Crime of Violence

The defendant is charged with the crime of [using; possessing] a “sawed-off” shotgun in the [commission; attempted commission] of a crime of violence. The Commonwealth must prove beyond a reasonable doubt that the defendant [used; possessed] a “sawed-off” shotgun in the [commission; attempted commission] of the crime of (name of crime listed in Va. Code Ann. § 18.2-299).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty[but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove the crime beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P18.500 Possession or Use of “Sawed-Off” Shotgun for Crime of Violence

You have found the defendant guilty of the crime of [using; possessing] a “sawed-off” shotgun in the [commission; attempted commission] of a crime of violence.

Upon consideration of all the evidence you have heard, you shall fix the defendant’s punishment at:

- (1) Imprisonment for life or for a specific term, but not less than twenty (20) years; or**
- (2) Imprisonment for life or for a specific term, but not less than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 18.520 “Sawed-Off” Shotgun— Definition

A “sawed-off” shotgun is any weapon, loaded or unloaded, originally designed as a shoulder weapon, utilizing a self-contained cartridge from which a number of ball shot pellets or projectiles may be fired simultaneously from a smooth or rifled bore by a single function of the firing device and which has a barrel length of less than eighteen (18) inches for smooth bore weapons and sixteen (16) inches for rifled weapons. A weapon of less than .225 caliber is not a sawed-off shotgun.

Instruction No. 18.521 “Sawed-Off” Rifle— Definition

A “sawed-off” rifle is a rifle of any caliber, loaded or unloaded, which expels a projectile by action of an explosion and is designed as a shoulder weapon with a barrel or barrels with length of less than sixteen (16) inches, or which has been modified to an overall length of less than twenty-six (26) inches.

Instruction No. 18.600 Carrying Concealed Weapon

The defendant is charged with the crime of carrying a concealed weapon. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was carrying (name of weapon listed in Va. Code Ann. § 18.2-308) about his person; and**
- (2) That this weapon was hidden from common observation.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.600 Carrying Concealed Weapon

You have found the defendant guilty of the crime of carrying a concealed weapon.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.610 Possession of Firearm While in Possession of Certain Controlled Substances

The defendant is charged with the crime of possessing a firearm while possessing a controlled substance. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was unlawfully in possession of [name of drug] which is a Schedule [I; II] controlled substance; and**
- (2) That at the same time the defendant knowingly and intentionally possessed a firearm.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.610 Possession of Firearm While in Possession of Certain Controlled Substances

You have found the defendant guilty of the crime of possessing a firearm while possessing a controlled substance.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment of not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.611 Possession, Use or Display of Firearm in Committing or Attempting to Commit Manufacture, Sale, Distribution, Possession With Intent to Manufacture, Sell, Distribute a Schedule I or Schedule II Substance or More Than One Pound of Marijuana

The defendant is charged with the crime of [possessing; using; attempting to use; displaying in a threatening manner] **a firearm while committing or attempting to commit illegal** [manufacture; sale; distribution; possession with intent to manufacture, distribute, sell] **of** [(name of drug), which is a Schedule [I; II] controlled substance; more than one (1) pound of marijuana]. **The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

(1) That the defendant [possessed; used; attempted to use; displayed in a threatening manner] **a firearm; and**

(2) That the [possession; use; attempted use; display] **was while committing or attempting to commit illegal** [manufacture; sale; distribution; possession with intent to manufacture, distribute, sell] **of** [(name of drug) which is a Schedule [I; II] controlled substance; more than one (1) pound of marijuana].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.611 Possession, Use or Display of Firearm in Committing or Attempting to Commit Manufacture, Sale, Distribution, Possession With Intent to Manufacture, Sell, Distribute a Schedule I or Schedule II Substance or More Than One Pound of Marijuana

You have found the defendant guilty of the crime of [possessing; using; attempting to use; displaying in a threatening manner] **a firearm while committing or attempting to commit illegal** [manufacture; sale; distribution; possession with intent to manufacture, distribute, sell] **of** [(name of drug) which is a Schedule [I; II] controlled substance; more than one (1) pound of marijuana].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a term of imprisonment of five (5) years.

Instruction No. 18.612 Possession of Firearm On or About the Person While in Possession of Certain Controlled Substances

The defendant is charged with the crime of possessing a firearm on or about his person while possessing a controlled substance. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was unlawfully in possession of (name of drug) which is a Schedule [I; II] controlled substance; and**
- (2) That at the same time the defendant knowingly and intentionally possessed the firearm; and**
- (3) That the firearm was on or about the defendant's person.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.612 Possession of Firearm On or About the Person While in Possession of Certain Controlled Substances

You have found the defendant guilty of the crime of possessing a firearm on or about his person while possessing a controlled substance.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment of not less than two (2) years nor more than five (5) years.

Instruction No. 18.615 Definition of Firearm—§ 18.2-308.4(A), (B)

A firearm is a weapon designed, made, and intended to expel a projectile by means of an explosion. It is not necessary that the firearm be operable, capable of being fired, or have the actual capacity to do serious harm.

Instruction No. 18.616 Definition of Firearm—§ 18.2-308.4(C)

A firearm is any instrument that is capable of expelling a projectile by force or gunpowder. A firearm is also an object that is not capable of expelling a projectile by force or gunpowder but gives the appearance of being able to do so.

Instruction No. 18.620 Possession or Transportation of Firearm, Ammunition, Stun Weapon, or Explosive Material by Felon

The defendant is charged with the crime of [possessing; transporting] a [firearm; ammunition for a firearm; stun weapon; explosive material] after having been convicted of [(name of felony); (name of violent felony under Va. Code Ann. § 17.1-805)]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant knowingly and intentionally [possessed; transported] a [firearm; ammunition for a firearm; stun weapon; explosive material]; and

(2) That the defendant had been previously convicted of [(name of applicable felony); (name of applicable violent felony under Va. Code Ann. § 17.1-805)] under the laws of [this or any other state; the District of Columbia; the United States or any territory thereof].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of [possession; transportation] of a [firearm; ammunition for a firearm; stun weapon; explosive material] after having been convicted of a [(name of felony); (name of violent felony under Va. Code Ann. § 17.1-805)] [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.620(a) Possession or Transportation of Firearm by Felon (Other Felony)

You have found the defendant guilty of the crime of possessing or transporting a firearm after having been convicted of (name of felony).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment of no less than two (2) years, but no more than five (5) years.

Instruction No. P18.620(b) Possession or Transportation of Firearm by Felon (Violent Felony)

You have found the defendant guilty of the crime of possessing or transporting a firearm after having been convicted of (name of violent felony).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment of five (5) years.

Instruction No. P18.620(c) Possession or Transportation of Stun Weapon or Explosive Material by Felon

You have found the defendant guilty of the crime of possessing or transporting [a stun weapon; ammunition for a firearm; explosive material] **after having been convicted of** (name of felony).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years;**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.622 Definition of Firearm— Convicted Felon

A firearm is an instrument designed, made, and intended to expel a projectile by means of an explosion. It is not necessary that the firearm be operable, capable of being fired, or have the actual capacity to do serious harm.

Instruction No. 18.625 Carrying Concealed Weapon by Felon

The defendant is charged with the crime of carrying a concealed weapon after having been convicted of a felony. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant knowingly and intentionally carried about his person, [(name of weapon listed in Va. Code Ann. § 18.2-308(A)); weapon substantially similar to (designate one or more weapon(s) enumerated in Va. Code Ann. § 18.2-308(A))];**
- (2) That this weapon was hidden from common observation; and**
- (3) That the defendant had been previously convicted of (name of applicable felony) under the laws of [this or any other state; the District of Columbia; the United States or any territory thereof].**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.625 Carrying Concealed Weapon by Felon

You have found the defendant guilty of the crime of carrying a concealed weapon after having been convicted of a felony.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than 1 (one) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than 12 months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than 12 months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.630 Manufacture, Import, Sale, Transfer or Possession of Plastic Firearm

The defendant is charged with the crime of [manufacturing; importing; selling; transferring; possessing] a plastic firearm. The Commonwealth must prove beyond a reasonable doubt that the defendant knowingly and intentionally [manufactured; imported; sold; transferred; possessed] a plastic firearm.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove the crime beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P18.630 Manufacture, Import, Sale, Transfer or Possession of Plastic Firearm

You have found the defendant guilty of the crime of [manufacturing; importing; selling; transferring; possessing] a plastic firearm.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.640 Plastic Firearm— Definition

A plastic firearm is any firearm containing less than 3.7 ounces of electromagnetically detectable metal in the barrel, slide, cylinder, frame or receiver, of which, when subjected to inspection by X-ray machines commonly used at airports, does not generate an image that accurately depicts its shape.

Instruction No. 18.650 False Statement on Consent Form for Firearms Dealer to Obtain Criminal History Record

The defendant is charged with the crime of making a materially false statement on the form consenting to have a dealer obtain his criminal history record. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant completed a form provided by the Virginia Department of State Police consenting to have a firearms dealer obtain his criminal history record; and**
- (2) That the defendant willfully and intentionally made a false statement on the consent form; and**
- (3) That the false statement was material to a determination as to whether the defendant was eligible to purchase a firearm.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.650 False Statement on Consent Form for Firearms Dealer to Obtain Criminal History Record

You have found the defendant guilty of the crime of making a materially false statement on the form consenting to have a dealer obtain his criminal history record.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.660 Purchasing Firearm With Intent to Provide It to Person Who Is Ineligible to Acquire One From Dealer

The defendant is charged with the crime of purchasing a firearm with intent to provide it to any person who is ineligible to acquire one from a dealer. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant purchased a firearm; and**
- (2) That the defendant intended at the time of the purchase to resell or otherwise provide that firearm to any person who he knows or has reason to believe was ineligible to purchase or receive a firearm from a dealer.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt both of the elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.660 Purchasing Firearm With Intent to Provide It to Person Who Is Ineligible to Acquire One From Dealer

You have found the defendant guilty of the crime of purchasing a firearm with intent to provide it to any person who is ineligible to acquire one from a dealer.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 18.700 Use or Display of Firearm in Committing or Attempting to Commit Murder, Rape, Robbery, Carjacking, Burglary, Malicious Wounding, Abduction, Forcible Sodomy, or Animate/ Inanimate Object Sexual Penetration

The defendant is charged with the crime of [displaying in a threatening manner; using; attempting to use] (name of firearm listed in Va. Code Ann. § 18.2-53.1) while committing or attempting to commit (name of crime listed in Va. Code Ann. § 18.2-53.1). The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [displayed in a threatening manner; used; attempted to use] (name of firearm listed in Va. Code Ann. § 18.2-53.1); and

(2) That the [display; use; attempted use] occurred while the defendant was committing or attempting to commit (name of crime listed in Va. Code Ann. § 18.2-53.1).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.700 Use or Display of Firearm in Committing or Attempting to Commit Murder, Rape, Robbery, Carjacking, Burglary, Malicious Wounding, Abduction, Forcible Sodomy or Animate/ Inanimate Object Sexual Penetration

You have found the defendant guilty of the crime of [displaying in a threatening manner; using; attempting to use] (name of firearm listed in Va. Code Ann. § 18.2-53.1) while committing or attempting to commit (name of crime listed in Va. Code Ann. § 18.2-53.1).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a term of imprisonment of three (3) years.

Instruction No. 18.702 Definition of Firearm— Use of Firearm in Felony

A firearm is any instrument that is capable of expelling a projectile by force or gunpowder. A firearm is also an object that is not capable of expelling a projectile by force or gunpowder but gives the appearance of being able to do so.

The existence of a firearm may be proved by circumstantial evidence, direct evidence, or both.

Instruction No. 18.705 Definition of Firearm— Used for Purposes of Intimidation

Where a victim reasonably perceived a threat or intimidation by a firearm, it is not necessary that the object in question was in fact a firearm.

Instruction No. 18.710 Pointing or Brandishing Firearm or Object Similar in Appearance to a Firearm

The defendant is charged with the crime of [pointing; brandishing] [a firearm; an object similar in appearance to a firearm]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [pointed; brandished] [a firearm; an object similar in appearance to a firearm]; and**
- (2) That the defendant did so in such a manner as to reasonably induce fear or apprehension of bodily harm in the mind of another person.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.710 Pointing or Brandishing Firearm or Object Similar in Appearance to a Firearm

You have found the defendant guilty of the crime of [pointing; brandishing] [a firearm; an object similar in appearance to a firearm].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.750 Throwing Object From a Place Higher Than One Story

The defendant is charged with the crime of intentionally throwing [a; an] (name of object capable of causing injury to another person) from a [balcony; roof top; (name other place)] more than one story above ground level with the intent to cause injury to another. The Commonwealth must prove beyond a reasonable doubt the following elements:

- (1) That the defendant threw [a; an] (name of object capable of causing injury to another person) from a place more than one story above ground level; and**
- (2) That the defendant did so with the intent to cause injury to another person.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt both elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.750 Throwing an Object From a Place Higher Than One Story

You have found the defendant guilty of the crime of throwing an object from a place higher than one story with the intent to cause injury to another person.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment of not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.810 Actual and Constructive Possession of Firearm—Definition

To knowingly and intentionally possess a firearm means that a person is aware of the presence and character of the firearm and has actual physical possession or constructive possession of it. Constructive possession means that the person has dominion and control over the firearm. Mere proximity is not enough.

Possession need not be exclusive; it may be shared with another. The length of time of the possession is not material.

Ownership or occupancy of the [premises; vehicle] in which a firearm is found does not create a presumption that the owner or occupant either knowingly or intentionally possessed such firearm. Such ownership or occupancy is a fact which may be considered with other evidence.

Possession may be proved by acts, declarations or conduct of the defendant from which it may be fairly inferred that he was aware of the presence and character of the firearm at the place found.

Instruction No. 18.850 Deadly Weapon— Definition

A deadly weapon is any object or instrument, not part of the human body, that is likely to cause death or great bodily injury because of the manner of its use and under the circumstances in which it is used.

Instruction No. 18.900 Use or Attempted Use of Restricted Ammunition in Committing or Attempting to Commit Crime

The defendant is charged with the crime of using or attempting to use restricted firearm ammunition while committing or attempting to commit (name of crime). The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant knowingly used or attempted to use types of ammunition that are** [coated with or contain in whole or in part polytetrafluorethylene or a similar product; commonly known as “KTW” bullets or “French Arcanes”; cartridges containing bullets coated with a plastic substance with other than lead or lead alloy cores; jacketed bullets with other than lead or lead alloy cores; cartridges of which the bullet itself is wholly comprised of a metal or metal alloy other than lead]; **and**
- (2) That the use or attempted use was while committing or attempting to commit (name of crime).**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.900 Use or Attempted Use of Restricted Ammunition in Committing or Attempting to Commit Crime

You have found the defendant guilty of the crime of using or attempting to use restricted firearm ammunition while committing or attempting to commit (name of crime).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.910 Pointing or Brandishing a Machete or Other Bladed Weapon

The defendant is charged with the crime of [pointing; holding; brandishing] [a machete; a weapon with an exposed blade 12 inches in length or longer] with the intent of intimidating [a person; a group of persons]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [pointed; held; brandished] [a machete with an exposed blade 12 inches in length or longer; a weapon with an exposed blade 12 inches in length or longer]; and**
- (2) That the defendant did so with the intent of intimidating [a person; a group of persons]; and**
- (3) That the defendant did so in a manner that reasonably demonstrates that intent.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any or all of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.910 Pointing or Brandishing a Machete or Other Bladed Weapon

You have found the defendant guilty of the crime of [pointing; holding; brandishing] [a machete; a weapon with an exposed blade 12 inches in length or longer].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.920 Reckless Handling of a Firearm—Misdemeanor

The defendant is charged with the crime of reckless handling of a firearm so as to endanger the life, limb, or property of any person. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant recklessly handled a firearm; and**
- (2) The life, limb, or property of a person was endangered.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.920 Reckless Handling of a Firearm—Misdemeanor

You have found the defendant guilty of the crime of reckless handling of a firearm.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.930 Reckless Handling of a Firearm—Felony

The Defendant is charged with the crime of reckless handling of a firearm in a manner so gross, wanton and culpable as to show a reckless disregard for human life and causing serious bodily injury of another person resulting in permanent and significant impairment. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant handled a firearm in a manner so gross, wanton and culpable as to show a reckless disregard for human life; and**
- (2) The defendant caused serious bodily injury of another person resulting in permanent and significant physical impairment.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of felonious reckless handling of a firearm [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has not proved either element above, but you find that the Commonwealth has proven beyond a reasonable doubt that

- (1) The defendant recklessly handled a firearm; and**
- (2) The life, limb, or property of a person was endangered,**

then you shall find the defendant guilty of reckless handling of a firearm [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P18.930 Reckless Handling of a Firearm—Felony

You have found the defendant guilty of the crime of felonious reckless handling of a firearm.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 18.940 Definition of Firearm— Reckless Handling of a Firearm

A firearm is an instrument designed, made, and intended to expel a projectile by means of an explosion.

Instruction No. 19.100 Killing Deer at Night by Light—General

The defendant is charged with the crime of killing a deer at night by light. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant killed a deer; and
- (2) That he did so between a half hour after sunset on any day and a half hour before sunrise the following day; and
- (3) That he did so by use of a [light attached to any vehicle; spotlight; flashlight].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [and fix his punishment at:

- (1) Confinement in jail for a specific time, but not more than six (6) months; or
- (2) A fine of a specific amount, but not more than \$1,000; or
- (3) Confinement in jail for a specific time, but not more than six (6) months, and a fine of a specific amount, but not more than \$1,000].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. 19.200 Attempted Killing of Deer at Night by Light—Inference of Attempt

The defendant is charged with the crime of attempting to kill a deer at night by light. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant attempted to kill a deer; and**
- (2) That he did so between a half hour after sunset on any day and a half hour before sunrise the following day; and**
- (3) That he did so by use of a [light attached to any vehicle; spotlight; flashlight].**

[If you find from the evidence that, without good cause, there was a flashing of a [light attached to any vehicle; spotlight; flashlight] from any vehicle between a half hour after sunset on any day and a half hour before sunrise the following day by any person who was then in possession of a [firearm; crossbow; bow and arrow; speargun], then you may infer that the defendant attempted to kill a deer, unless, from all of the evidence, you have a reasonable doubt as to whether the defendant attempted to kill a deer.]

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [and fix his punishment at:

- (1) Confinement in jail for a specific time, but not more than six (6) months; or**
- (2) A fine of a specific amount, but not more than \$1,000; or**
- (3) Confinement in jail for a specific time, but not more than six (6) months, and a fine of a specific amount, but not more than \$1,000].**

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. 20.100 Disorderly Conduct

The defendant is charged with the crime of disorderly conduct. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the conduct of the defendant occurred [in a public place; in a street; in a highway; in a public building; while in or on a public conveyance]; and**
- (2) That the conduct of the defendant had a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct was directed; and**
- (3) That the defendant intended to cause public [inconvenience; annoyance; alarm] or recklessly created a risk thereof.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P20.100 Disorderly Conduct

You have found the defendant guilty of the crime of disorderly conduct.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific term, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific term, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 21.100 Driving While Under the Influence of Alcohol and/or Drugs (Including “Per Se” Offenses)

The defendant is charged with the crime of driving while [having a blood alcohol concentration of 0.08 or more; having a concentration of 0.08 grams or more of alcohol per 210 liters of breath; under the influence of alcohol; under the influence of drugs; under the influence of a combination of alcohol and drugs; having a blood concentration of cocaine equal to or greater than 0.02 milligrams of cocaine per liter of blood; having a blood concentration of methamphetamine equal to or greater than 0.1 milligrams of methamphetamine per liter of blood; having a blood concentration of phencyclidine equal to or greater than 0.01 milligrams of phencyclidine per liter of blood; having a blood concentration of 3,4-methylenedioxymethamphetamine equal to or greater than 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood]. **The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

(1) That the defendant was [driving; operating] **a motor vehicle; and**

(2) That at the time [he had a blood alcohol concentration of 0.08 or more; he had a concentration of 0.08 grams or more of alcohol per 210 liters of breath; he was under the influence of alcohol; he was under the influence of a narcotic drug or other self-administered intoxicant or drug, or a combination of such drugs to a degree which impaired his ability to drive or operate a motor vehicle safely; he was under the combined influence of alcohol and any drug or drugs to a degree which impaired his ability to drive or operate a motor vehicle safely; he had a blood concentration of cocaine equal to or greater than 0.02 milligrams of cocaine per liter of blood; he had a blood concentration of methamphetamine equal to or greater than 0.1 milligrams of methamphetamine per liter of blood; he had a blood concentration of phencyclidine equal to or greater than 0.01 milligrams of phencyclidine per liter of blood; he had a concentration of 3,4-methylenedioxymethamphetamine equal to or greater than 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P21.100 Driving While Under the Influence of Alcohol and/or Drugs (Including “Per Se” Offenses)

You have found the defendant guilty of the crime of driving while [having a blood alcohol concentration of 0.08 or more; having a concentration of 0.08 grams or more of alcohol per 210 liters of breath; under the influence of alcohol; under the influence of drugs; under the influence of a combination of alcohol and drugs; having a blood concentration of cocaine equal to or greater than 0.02 milligrams of cocaine per liter of blood; having a blood concentration of methamphetamine equal to or greater than 0.1 milligrams of methamphetamine per liter of blood; having a blood concentration of phencyclidine equal to or greater than 0.01 milligrams of phencyclidine per liter of blood; having a blood concentration of 3,4-methylenedioxymethamphetamine equal to or greater than 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood].

Upon consideration of all the evidence you have heard, you shall fix the defendant’s punishment at:

- (1) A fine of a specific amount, but not less than \$250 nor more than \$2,500; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not less than \$250 nor more than \$2,500.**

Instruction No. 21.110 Person Under Age 21 Operating Motor Vehicle After Illegally Consuming Alcohol

The defendant is charged with the crime of operating a motor vehicle after illegally consuming alcohol while under the age of twenty-one (21). The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was under the age of twenty-one (21) years; and**
- (2) That the defendant operated a motor vehicle; and**
- (3) That the operation was** [after consuming alcohol in any amount; with a blood alcohol concentration of 0.02 or more by weight by volume, but less than 0.08 by weight by volume; with a blood alcohol concentration of 0.02 grams or more per 210 liters of breath, but less than 0.08 grams per 210 liters of breath]; **and**
- (4) That the consumption was illegal.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty[, but you shall not fix his punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P21.110 Person Under Age 21 Operating Motor Vehicle After Illegally Consuming Alcohol

You have found the defendant guilty of the crime of operating a motor vehicle after illegally consuming alcohol while under the age of twenty-one (21).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A fine of a specific amount, but not less than \$500 nor more than \$2,500 or performance of not less than fifty (50) hours of community service; or,**
- (2) A fine of a specific amount, but not less than \$500 nor more than \$2,500 or performance of not less than fifty (50) hours of community service, and confinement in jail for a specific time, but not more than twelve (12) months.**

Instruction No. 21.150 Maiming—Under the Influence

The defendant is charged with the crime of maiming of another as a result of driving while under the influence. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was [driving; operating] a motor vehicle; and**
- (2) That at the time** [he had a blood alcohol concentration of 0.08 or more; he had a concentration of 0.08 grams or more of alcohol per 210 liters of breath; he was under the influence of alcohol; he was under the influence of a narcotic drug or other self-administered intoxicant or drug, or a combination of such drugs to a degree which impaired his ability to drive or operate a motor vehicle safely; he was under the combined influence of alcohol and any drug or drugs to a degree which impaired his ability to drive or operate a motor vehicle safely; he had a blood concentration of cocaine equal to or greater than 0.02 milligrams of cocaine per liter of blood; he had a blood concentration of methamphetamine equal to or greater than 0.1 milligrams of methamphetamine per liter of blood; he had a blood concentration of phencyclidine equal to or greater than 0.01 milligrams of phencyclidine per liter of blood; he had a blood concentration of 3,4-methylenedioxymethamphetamine equal to or greater than 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood]; and
- (3) That as a result of driving under the influence the defendant unintentionally caused serious bodily injury to** (name of person); and
- (4) That the serious bodily injury resulted in permanent and significant physical impairment to** (name of person); and
- (5) That the defendant's conduct was so gross, wanton and culpable as to show a reckless disregard for human life.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of maiming of another as a result of driving while under the influence, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P21.150 Maiming—Under the Influence

You have found the defendant guilty of the crime of maiming of another as a result of driving while under the influence.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specified amount, but not more than \$100,000.**

Instruction No. 21.200 Under Influence of Alcohol—Definition

A person is under the influence of alcohol if he has drunk enough alcoholic beverages to observably affect his manner, disposition, speech, muscular movement, general appearance or behavior.

Instruction No. 21.210 Serious Bodily Injury— Definition

Serious bodily injury means bodily injury that involves substantial risk of death, extreme physical pain, obvious disfigurement that lasts for a long time, or loss or impairment of the function of a bodily member, organ or mental faculty that lasts for a long time.

Instruction No. 21.250 Operating—Definition

Operating a motor vehicle means [driving the vehicle from one place to another; starting the engine; manipulating the electrical or mechanical equipment of the vehicle without actually putting the vehicle in motion; engaging the machinery of the vehicle which alone or in sequence will activate the motive power of the vehicle; sitting behind the steering wheel of a motor vehicle with the key inserted into the ignition switch of the vehicle].

Instruction No. 21.300 Alcohol Concentration— 0.05 or Less

You have received evidence of the amount of alcohol concentration of the defendant at the time that a chemical test was administered. If at that time the concentration was 0.05 or less, there is a rebuttable presumption that the defendant was not under the influence of alcohol at the time of the alleged offense. This presumption may be rebutted by other evidence.

Instruction No. 21.320 Alcohol Concentration— 0.08 or More

You have received evidence of the amount of alcohol in the blood of the defendant at the time that a chemical test was administered. If at that time the amount was 0.08 or more, you are permitted, but not required, to infer that the defendant was under the influence of alcohol at the time of the alleged crime.

Instruction No. 21.340 Alcohol Concentration— More Than 0.05 But Less Than 0.08

You have received evidence of the amount of alcohol in the blood of the defendant at the time that a chemical test was administered. If at that time the amount of alcohol in the blood of the defendant was more than 0.05 but less than 0.08, there is no presumption that the defendant was or was not under the influence of alcohol at the time of the alleged crime, but the evidence of the amount of alcohol in the blood of the defendant at the time that a chemical test was administered may be considered by you with other evidence in determining the guilt or innocence of the defendant.

Instruction No. 21.350 Drug Concentration— Not “Per Se” Offense

You have received evidence of the amount of [cocaine; methamphetamine; phencyclidine; 3,4-methylenedioxymethamphetamine] in the blood of the defendant at the time that a chemical test was administered. If at that time the amount was equal to or greater than [0.02 milligrams of cocaine per liter of blood; 0.1 milligrams of methamphetamine per liter of blood; 0.01 milligrams of phencyclidine per liter of blood; 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood] you are permitted, but not required, to infer that the defendant was under the influence of drugs at the time of the alleged crime to a degree which impaired his ability to drive or operate any motor vehicle safely.

Instruction No. 21.360 Alcohol Concentration— 0.08 or More “Per Se” Offense

You have received evidence of the amount of blood alcohol concentration of the defendant at the time that a chemical test was administered. If at that time the concentration was 0.08 or more in the defendant’s blood, you are permitted, but not required, to infer that the defendant had a blood alcohol concentration of 0.08 or more at the time of the alleged crime.

Instruction No. 21.370 Drug Concentration —“Per Se” Offense

You have received evidence of the concentration of [cocaine; methamphetamine; phencyclidine; 3,4-methylenedioxymethamphetamine] in the blood of the defendant at the time that a chemical test was administered. If at that time the concentration was equal to or greater than [0.02 milligrams of cocaine per liter of blood; 0.1 milligrams of methamphetamine per liter of blood; 0.01 milligrams of phencyclidine per liter of blood; 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood] you are permitted, but not required, to infer that the defendant had a [cocaine; methamphetamine; phencyclidine; 3,4-methylenedioxymethamphetamine] concentration equal to or greater than [0.02 milligrams of cocaine per liter of blood; 0.1 milligrams of methamphetamine per liter of blood; 0.01 milligrams of phencyclidine per liter of blood; 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood] at the time of the alleged crime.

Instruction No. 21.400 Refusal to Submit to Blood or Breath Test

The defendant is charged with the crime of unreasonably refusing to submit to a [blood; breath; blood and breath] test. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was operating his motor vehicle on a highway; and**
- (2) That the defendant refused to submit to a [blood; breath] test to determine the [alcohol; drug; alcohol and drug] content of his blood; and**
- (3) That the defendant was arrested for a violation of [Virginia Code § 18.2-266; 18.2-266.1; or subsection B of § 18.2-272 or of a similar ordinance]; and**
- (4) That the refusal was unreasonable.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. 21.425 Evidence of Refusal to Submit to Blood or Breath Test

Evidence that the defendant unreasonably refused to submit to a blood or breath test to determine the [alcohol; drug] content of his blood is offered solely to explain the absence of a chemical test and shall not be considered by you as evidence of the defendant's guilt in this case.

Instruction No. 21.450 Consent to Blood or Breath Test

Any person who is arrested for driving under the influence on a highway is required to consent to take a test to determine the alcohol content of his blood. One is excused from taking the test if his refusal is reasonable under the circumstances. There must be some reasonable factual basis for the refusal.

Instruction No. 22.100 Schedule I or II Controlled Substance—Manufacturing

The defendant is charged with the crime of manufacturing (name of drug) which is a Schedule [I; II] controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant manufactured (name of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty of the crime of manufacturing (name of drug).

[If you find that the Commonwealth has failed to prove that the defendant manufactured (name of drug) but that the Commonwealth has proved beyond a reasonable doubt that the defendant knowingly and intentionally possessed (name of drug), then you shall find the defendant guilty of the crime of possession of (name of drug).]

[You shall not fix the defendant's punishment until your verdict has been returned and further evidence has been heard by you.]

[If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the above crimes, then you shall find the defendant not guilty.]

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant manufactured (name of drug), then you shall find the defendant not guilty of manufacturing (name of drug).

Instruction No. P22.100(a) Schedule I or II Controlled Substance—Manufacturing

You have found the defendant guilty of the crime of manufacturing (name of drug) which is a Schedule [I; II] controlled substance.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than forty (40) years and a fine of a specific amount, but not more than \$500,000.

Instruction No. P22.100(b) Schedule I or II Controlled Substance—Possession Only

You have found the defendant guilty of the crime of possession of (name of drug) which is a Schedule [I; II] controlled substance.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year and no more than ten (10) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.120 Marijuana— Manufacturing—Not for Own Use

The defendant is charged with the crime of manufacturing marijuana not for defendant's own use. The Commonwealth must prove beyond a reasonable doubt that the defendant manufactured marijuana not for his own use.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty of manufacturing marijuana [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant manufactured marijuana not for his own use, then you shall find the defendant not guilty of manufacturing.

Instruction No. P22.120 Marijuana— Manufacturing—Not for Own Use

You have found the defendant guilty of the crime of manufacturing marijuana not for defendant's own use.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specified term of imprisonment, but not less than five (5) years, nor more than thirty (30) years and a fine of a specific amount, but not more than \$10,000.

Instruction No. 22.140 Manufacturing or Manufacture Marijuana—Definition

“Manufacturing” or “manufacture” means the production of marijuana products or the blending, infusing, compounding, or other preparation of marijuana and marijuana products, including marijuana extraction or preparation by means of chemical synthesis.

“Manufacturing” or “manufacture” does not include cultivation or testing.

Instruction No. 22.200 Schedule I or II Controlled Substance—Selling, Giving, or Distributing: No Evidence of Accommodation

The defendant is charged with the crime of distributing (name of drug), which is a Schedule [I; II] controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant distributed (name of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant distributed (name of drug), then you shall find the defendant not guilty.

Instruction No. P22.200 Schedule I or II Controlled Substance—Selling, Giving, or Distributing: No Evidence of Accommodation

You have found the defendant guilty of the crime of distributing (name of drug), which is a Schedule [I; II] controlled substance.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than forty (40) years and a fine of a specific amount, but not more than \$500,000.

Instruction No. 22.220 Marijuana—Selling, Giving, or Distributing: No Evidence of Accommodation

The defendant is charged with the crime of distributing more than one-half [one] ounce but not more than five (5) pounds of marijuana. The Commonwealth must prove beyond a reasonable doubt that the defendant distributed more than one-half [one] ounce but not more than five (5) pounds of marijuana.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant distributed marijuana, then you shall find the defendant not guilty.

Instruction No. P22.220 Marijuana—Selling, Giving, or Distributing: No Evidence of Accommodation

You have found the defendant guilty of the crime of distributing more than one-half [one] ounce but not more than five (5) pounds of marijuana.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
 - or**
 - (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
 - (3) A fine of a specific amount, but not more than \$2,500; or**
 - (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**
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Instruction No. 22.240 Schedule I or II Controlled Substance—Selling, Giving, or Distributing: Evidence of Accommodation

The defendant is charged with the crime of distributing (name of drug) which is a Schedule [I; II] controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant distributed (name of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt that the defendant distributed (name of drug), then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant distributed (name of drug), then you shall find the defendant not guilty.

Instruction No. P22.240 Schedule I or II Controlled Substance—Selling, Giving, or Distributing: Evidence of Accommodation

You have found the defendant guilty of the crime of distributing (name of drug) which is a Schedule [I; II] controlled substance.

In determining the punishment, unless you find that the defendant distributed (name of drug) only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon (name of drug), you shall fix his punishment at a specific term of imprisonment, but not less than five (5) years nor more than forty (40) years and a fine of a specific amount, but not more than \$500,000.

If you have found beyond a reasonable doubt that the defendant distributed (name of drug), but further find from the greater weight of the evidence that this distribution was done only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon (name of drug), then you shall fix his punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.260 Marijuana—Selling, Giving, or Distributing: Evidence of Accommodation

The defendant is charged with the crime of distributing more than one-half [one] ounce but not more than five (5) pounds of marijuana. The Commonwealth must prove beyond a reasonable doubt that the defendant distributed more than one-half [one] ounce but not more than five (5) pounds of marijuana.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt that the defendant distributed more than one-half [one] ounce but not more than five (5) pounds of marijuana, then you shall find the defendant guilty [but you shall not fix the punishment until the verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant distributed marijuana, then you shall find the defendant not guilty.

Instruction No. P22.260 Marijuana—Selling, Giving, or Distributing: Evidence of Accommodation

You have found the defendant guilty of distributing more than one-half [one] ounce but not more than five (5) pounds of marijuana.

In determining the punishment, unless you find that the defendant distributed marijuana only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon marijuana, you shall fix his punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

If you have found beyond a reasonable doubt that the defendant distributed such quantity of marijuana, but further find from the greater weight of the evidence that this was done only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon marijuana, then you shall fix his punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
 - (2) A fine of a specific amount, but not more than \$2,500; or**
 - (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**
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Instruction No. 22.270 Methamphetamine— Manufacturing, Selling, Giving, Distributing, Possessing with Intent—28 Grams or More—§ 18.2-248.03(A)

The defendant is charged with the crime of [manufacturing; selling, giving, or distributing; possessing with intent to manufacture, sell, give, or distribute] methamphetamine. The Commonwealth must prove beyond a reasonable doubt that the defendant [manufactured; sold, gave, or distributed; possessed with intent to manufacture, sell, give, or distribute] 28 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant [manufactured; sold, gave, or distributed; possessed with intent to manufacture, sell, give, or distribute] 28 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers, then you shall find the defendant not guilty.

Instruction No. P22.270 Methamphetamine— Manufacturing, Selling, Giving, Distributing, Possessing with Intent—28 Grams or More—§ 18.2-248.03(A)

You have found the defendant guilty of the crime of [manufacturing; selling, giving, or distributing; possessing with intent to manufacture, sell, give, or distribute] methamphetamine.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than forty (40) years and a fine of a specific amount, but not more than \$500,000.

Instruction No. 22.275 Methamphetamine— Manufacturing, Selling, Giving, Distributing, Possessing with Intent—227 Grams or More—§ 18.2-248.03(B)

The defendant is charged with the crime of [manufacturing; selling, giving, or distributing; possessing with intent to manufacture, sell, give, or distribute] methamphetamine. The Commonwealth must prove beyond a reasonable doubt that the defendant [manufactured; sold, gave, or distributed; possessed with intent to manufacture, sell, give, or distribute] 227 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant [manufactured; sold, gave, or distributed; possessed with intent to manufacture, sell, give, or distribute] 227 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers, then you shall find the defendant not guilty.

Instruction No. P22.275 Methamphetamine— Manufacturing, Selling, Giving, Distributing, Possessing with Intent—227 Grams or More—§ 18.2-248.03(B)

You have found the defendant guilty of the crime of [manufacturing; selling, giving, or distributing; possessing with intent to manufacture, sell, give, or distribute] **methamphetamine.**

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than life and a fine of a specific amount, but not more than \$1 million.

Instruction No. 22.277 Manufacturing Methamphetamine While a Minor or Incapacitated Person is Present

The defendant is charged with the crime of [manufacturing; attempting to manufacture] methamphetamine while a minor or incapacitated person is present. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- 1. That the defendant [manufactured; attempted to manufacture] methamphetamine;**
- 2. That (name of minor) was present in the same [dwelling; apartment; unit of a hotel; garage; shed; vehicle; (describe other location)] during the [manufacture; attempted manufacture] of methamphetamine;**
- 3. That during the [manufacture; attempted manufacture] (name of minor) was [a minor under the age of 15; a minor 15 years of age or older with whom the defendant maintained a custodial relationship; a mentally incapacitated or physically helpless person of any age]; and**
- 4. That the defendant, during the [manufacture; attempted manufacture] was at least 18 years of age.**

If you find from the evidence that the Commonwealth has proved each of the elements of the crime set out above beyond a reasonable doubt, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence is heard by you].

If you find that the Commonwealth has failed to prove one or more of these elements beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P22.277 Manufacturing Methamphetamine While a Minor or Incapacitated Person is Present

You have found the defendant guilty of the crime of [manufacturing; attempting to manufacture] methamphetamine while a minor or incapacitated person is present.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than ten (10) years nor more than forty (40) years.

Instruction No. 22.280 Profit—Definition

The word “profit” as used in this case does not necessarily mean that the defendant made money or received more value than he gave for the drug but is used to indicate a commercial transaction.

Instruction No. 22.300 Schedule I or II Controlled Substance—Possession With Intent to Manufacture, Sell, Give, or Distribute: No Evidence of Accommodation

The defendant is charged with the crime of possession with intent to [distribute; manufacture] (name of drug) which is a Schedule [I; II] controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed with intent to [distribute; manufacture] (name of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty of possession with intent to [distribute; manufacture] (name of drug) [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

[If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt that the defendant possessed (name of drug) but you do not find beyond a reasonable doubt that the defendant intended to [distribute; manufacture] (name of drug), then you shall find the defendant guilty of possession of (name of drug) (but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you)].

[If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the above offenses, then you shall find the defendant not guilty.]

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed with intent to [distribute; manufacture] (name of drug), then you shall find the defendant not guilty.

Instruction No. P22.300 Schedule I or II Controlled Substance—Possession With Intent to Manufacture, Sell, Give, or Distribute: No Evidence of Accommodation

You have found the defendant guilty of the crime of possession with intent [to distribute; to manufacture] (name of drug) which is a Schedule [I; II] controlled substance.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than forty (40) years and a fine of a specific amount, but not more than \$500,000.

Instruction No. 22.310 Marijuana—Possession With Intent to Manufacture—Not for Own Use

The defendant is charged with the crime of possession with intent to manufacture marijuana not for his own use. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed marijuana with intent to manufacture it not for his own use.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed marijuana with intent to manufacture it not for his own use, then you shall find the defendant not guilty.

Instruction No. P22.310 Marijuana—Possession With Intent to Manufacture—Not for Own Use

You have found the defendant guilty of the crime of possession with intent to manufacture marijuana not for his own use.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at confinement in the penitentiary for a specific term, but not less than five (5) years nor more than thirty (30) years and a fine of a specific amount, but not more than \$10,000.

Instruction No. 22.320 Marijuana—Possession With Intent to Sell, Give, or Distribute: No Evidence of Accommodation

The defendant is charged with the crime of possession with intent to distribute more than one-half [one] ounce but not more than five (5) pounds of marijuana. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed with intent to distribute more than one-half [one] ounce but not more than five (5) pounds of marijuana.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed with intent to distribute marijuana, then you shall find the defendant not guilty.

Instruction No. P22.320 Marijuana—Possession With Intent to Sell, Give, or Distribute: No Evidence of Accommodation

You have found the defendant guilty of the crime of possession with intent to distribute more than one-half [one] ounce but not more than five (5) pounds of marijuana.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.330 Knowing and Intentional Possession—Definition

To knowingly and intentionally possess a controlled substance means that a person is aware of the presence and character of the substance and has actual physical possession or constructive possession. Actual physical possession means that the substance is found on the person. Constructive possession means that the person has dominion and control over the substance. Mere proximity is not enough.

Possession need not be exclusive; it may be shared with another. The length of time of the possession is not material.

Ownership or occupancy of the [premises; vehicle; (describe other location)] in which a controlled substance is found does not create a presumption that the owner or occupant either knowingly or intentionally possessed such substance. Such ownership or occupancy is a fact which may be considered with other evidence.

Possession may be proved by acts, declarations or conduct of the defendant from which it may be fairly inferred that he was aware of the presence and character of the substance at the place found.

Instruction No. 22.340 Controlled Substance— Knowledge of Character

Knowledge that the substance [manufactured; distributed; possessed] **is** [marijuana; name of controlled substance; a controlled substance] **is an element of the crime of** [manufacturing; distributing; possessing; possessing with intent to distribute; possessing with intent to manufacture]. **Thus, you may not find the defendant guilty of such crime unless you believe beyond a reasonable doubt that he was aware that the substance he** [manufactured; distributed; possessed] **was** [marijuana; name of controlled substance; a controlled substance].

Instruction No. 22.350 Intent to Distribute— Factors to Be Considered in Determining

To possess with intent to distribute requires that the defendant have intent to distribute at the time of possession. In determining whether there is possession with intent to distribute, you may consider all facts and circumstances, including but not limited to: [the quantity possessed; the manner of packaging; the presence of an unusual amount of cash; the denomination of the cash possessed; the presence of equipment related to drug distribution; the presence or absence of drug paraphernalia suggestive of personal use; the presence of a firearm; the presence of a pager or electronic communications device; the conduct and statements of the defendant; the location at which the drugs were possessed; use of the drug by persons other than the defendant at the time it was seized; and the possession of more than one type of drug.]

[Where the defendant possesses a small quantity of drugs you may infer that the defendant intends to possess the drugs for personal use. However possession of a small quantity of drugs, combined with other facts and circumstances, may be sufficient to establish intent to distribute.]

Instruction No. 22.360 Schedule I or II Controlled Substance—Possession With Intent to Sell, Give, or Distribute: Evidence of Accommodation

The defendant is charged with the crime of possession with intent to distribute (name of drug) which is a Schedule [I; II] controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed with intent to distribute (name of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty of possession with intent to distribute (name of drug) [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

[If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt that the defendant possessed (name of drug) but you do not find beyond a reasonable doubt that the defendant intended to distribute (name of drug), then you shall find the defendant guilty of possession of (name of drug) (but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you)].

[If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the above offenses, then you shall find the defendant not guilty].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed with intent to distribute (name of drug), then you shall find the defendant not guilty.

Instruction No. P22.360 Schedule I or II Controlled Substance—Possession With Intent to Sell, Give, or Distribute: Evidence of Accommodation

You have found the defendant guilty of the crime of possessing with intent to distribute (name of drug) which is a Schedule [I; II] controlled substance.

In determining the punishment, unless you find that the defendant possessed (name of drug) with the intent to distribute only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon (name of drug), you shall fix his punishment at a specific term of imprisonment, but not less than five (5) years nor more than forty (40) years and a fine of a specific amount, but not more than \$500,000.

If you have found beyond a reasonable doubt that the defendant possessed (name of drug) with the intent to distribute, but further find from the greater weight of the evidence that this was done only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon (name of drug), then you shall fix his punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.370 Marijuana—Possession With Intent to Sell, Give, or Distribute: Evidence of Accommodation

The defendant is charged with the crime of possession with intent to distribute more than one-half [one] ounce but not more than five (5) pounds of marijuana. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed more than one-half [one] ounce but not more than five (5) pounds of marijuana with intent to distribute.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt that the defendant possessed more than one-half [one] ounce but not more than five (5) pounds of marijuana with intent to distribute, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant distributed marijuana, then you shall find the defendant not guilty.

Instruction No. P22.370 Marijuana—Possession With Intent to Sell, Give, or Distribute: Evidence of Accommodation

You have found the defendant guilty of the crime of possession with intent to distribute more than one-half [one] ounce but not more than five (5) pounds of marijuana.

In determining the punishment, unless you find that the defendant possessed marijuana with intent to distribute only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon marijuana, you shall fix his punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

If you have found beyond a reasonable doubt that the defendant possessed marijuana with intent to distribute, but further find from the greater weight of the evidence that this was done only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon marijuana, then you shall fix his punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
 - (2) A fine of a specific amount, but not more than \$2,500; or**
 - (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**
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Instruction No. 22.400 Schedule III, IV or V Controlled Substance—Manufacturing, Selling, Giving, Distributing, or Possessing With Intent to Manufacture or Distribute: No Evidence of Accommodation

The defendant is charged with the crime of [manufacturing; distributing; possessing with intent to (manufacture; distribute)] (name of drug) **which is a Schedule [III; IV; V] controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant** [manufactured; distributed; possessed with intent to (manufacture; distribute)] (name of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant [manufactured; distributed; possessed with intent to (manufacture; distribute)] (name of drug), **then you shall find the defendant not guilty.**

Instruction No. P22.400 Schedule V Controlled Substance—Manufacturing, Selling, Giving, Distributing, or Possessing With Intent to Manufacture or Distribute

You have found the defendant guilty of [manufacturing; distributing; possessing with intent to (manufacture; distribute)] (name of drug).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but for not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.410 Schedule III or IV Controlled Substance—Selling, Giving, Distributing or Possessing With the Intent to Distribute: Evidence of Accommodation

The defendant is charged with the crime of [distributing; possessing with intent to distribute] (name of drug) which is a Schedule [III; IV] controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant [distributed; possessed with intent to distribute] (name of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant [distributed; possessed with intent to distribute] (name of drug), then you shall find the defendant not guilty.

Instruction No. P22.420 Schedule III Controlled Substance—Manufacturing, Selling, Giving, Distributing, or Possessing With Intent to Manufacture or Distribute: No Evidence of Accommodation

You have found the defendant guilty of the crime of [manufacturing; distributing; possessing with intent to manufacture or distribute] (name of drug) which is a Schedule III controlled substance.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in prison for a specific time, but not less than one (1) year nor more than ten (10) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500 or and a fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for not more than twelve (12) months and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P22.430 Schedule III Controlled Substance—Selling, Giving, Distributing, or Possessing With Intent to Distribute: Evidence of Accommodation

You have found the defendant guilty of the crime of [distributing; possessing with intent to distribute] (name of drug) which is a Schedule III controlled substance.

In determining the punishment, unless you find that the defendant [distributed; possessed with intent to distribute] (name of drug) with the intent to distribute only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon (name of drug), you shall fix the defendant's punishment at:

- (1) Confinement in prison for a specific time, but not less than one (1) year nor more than ten (10) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for not more than twelve (12) months and a fine of a specific amount, but not more than \$2,500**

If you have found beyond a reasonable doubt that the defendant [distributed; possessed with intent to distribute] (name of drug) but further find from the greater weight of the evidence that [this distribution was done; the defendant intended to distribute] only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon (name of drug), then you shall fix his punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for not more than twelve (12) months and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P22.440 Schedule IV Controlled Substance—Selling, Giving, Distributing, or Possessing With Intent to Distribute: No Evidence of Accommodation

You have found the defendant guilty of the crime of [distributing; possessing with intent to distribute] (name of drug) which is a Schedule IV controlled substance.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in prison for a specific time, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for not more than twelve (12) months and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P22.450 Schedule IV Controlled Substance—Selling, Giving, Distributing, or Possessing With Intent to Distribute: Evidence of Accommodation

You have found the defendant guilty of the crime of [distributing; possessing with intent to distribute] (name of drug) which is a Schedule IV controlled substance:

In determining the punishment, unless you find that the defendant [distributed; possessed with intent to distribute] (name of drug) with the intent to distribute only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon (name of drug), you shall fix the defendant's punishment at:

- (1) Confinement in prison for a specific time, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for not more than twelve (12) months and a fine of a specific amount, but not more than \$2,500.**

If you have found beyond a reasonable doubt that the defendant [distributed; possessed with intent to distribute] (name of drug) but further find from the greater weight of the evidence that [this distribution was done; the defendant intended to distribute] only as an accommodation to another and not with the intent to profit or to induce the recipient to use or become addicted to or dependent upon (name of drug), then you shall fix his punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for not more than twelve (12) months and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.500(a) Schedule I, II, or III Controlled Substance—Possession

The defendant is charged with crime of possessing (name of drug) which is a Schedule [I; II; III] controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant knowingly and intentionally possessed (name of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed (name of drug), then you shall find the defendant not guilty.

Instruction No. 22.500(b) Possession of a Schedule IV Controlled Substance

The defendant is charged with the crime of possession of (name of drug) which is a Schedule IV controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed (name of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty.

[You have found the defendant guilty of the crime of possession of (name of drug) which is a Schedule IV controlled substance. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- 1. Confinement in jail for a specific time but not more than six (6) months; or**
- 2. A fine of a specific amount, but not more than \$1,000; or**
- 3. Confinement in jail for a specific time, but not more than six (6) months, and a fine of a specific amount, but not more than \$1,000].**

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed (name of drug), then you shall find the defendant not guilty.

Instruction No. 22.500(c) Possession of a Schedule V Controlled Substance

The defendant is charged with the crime of possession of (name of drug) which is a Schedule V controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed (name of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty.

[You have found the defendant guilty of the crime of possession of (name of drug) which is a Schedule V controlled substance. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a fine of a specific amount, but not more than \$500.]

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed (name of drug), then you shall find the defendant not guilty.

Instruction No. 22.500(d) Possession of a Schedule VI Controlled Substance

The defendant is charged with the crime of possession of (name of drug) which is a Schedule VI controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed (name of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty.

[You have found the defendant guilty of the crime of possession of (name of drug) which is a Schedule VI controlled substance. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a fine of a specific amount, but not more than \$250.]

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed (name of drug), then you shall find the defendant not guilty.

Instruction No. P22.500(a) Schedule I or II Controlled Substance—Possession

You have found the defendant guilty of the crime of possessing (name of drug) which is a Schedule [I; II] controlled substance.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P22.500(b) Schedule I Controlled Substance—Cannabimimetic Agents —Possession

You have found the defendant guilty of the crime of possessing (name of drug) which is a cannabimimetic agent.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P22.500(c) Schedule III Controlled Substance—Possession

You have found the defendant guilty of the crime of possessing (name of drug) which is a Schedule III controlled substance.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.520 Marijuana—Possession

The defendant is charged with the crime of possessing marijuana. The Commonwealth must prove beyond a reasonable doubt that the defendant knowingly and intentionally possessed marijuana.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty.

[You shall fix his punishment at:

- (1) Confinement in jail for a specific time, but not more than thirty (30) days; or
- (2) A fine of a specific amount, but not more than \$500; or
- (3) Confinement in jail for a specific time, but not more than thirty (30) days, and a fine of a specific amount, but not more than \$500.]

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed marijuana, then you shall find the defendant not guilty.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt that the defendant knowingly and intentionally possessed marijuana as charged and you further find from the evidence that the defendant has previously been convicted of possession of marijuana, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

Instruction No. P22.520 Possession of Marijuana—Second or Subsequent Offense

You have found the defendant guilty of the crime of possession of marijuana, second or subsequent offense.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- 1. Confinement in jail for a specific time, but not more than twelve (12) months; or**
- 2. A fine of a specific amount, but not more than \$2,500; or**
- 3. Confinement in jail for a specific time, but not more than twelve (12) months, and fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.520(a) Marijuana— Possession; Presumption of Personal Use

It is presumed that a person who possesses no more than one ounce of marijuana possesses it for personal use. Other evidence may rebut this presumption.

Instruction No. 22.521 Marijuana or Marijuana Products—Felony Possession

The defendant is charged with the crime of possessing on his person [or in a public place] more than one pound of marijuana or an equivalent amount of marijuana products. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed on his person [or in a public place] more than one pound of marijuana or an equivalent amount of marijuana products.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed on his person [or in a public place] more than one pound of marijuana or an equivalent amount of marijuana product, then you shall find the defendant not guilty.

Instruction No. P22.521 Marijuana or Marijuana Products—Felony Possession

You have found the defendant guilty of the crime of possession of marijuana or marijuana products.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in prison for a specific time, but not less than one (1) year nor more than ten (10) years; or**
- (2) A fine of a specific amount, but not more than \$250,000; or**
- (3) Confinement in prison for not less than one (1) year nor more than ten (10) years, and a fine of a specific amount, but not more than \$250,000.**

Instruction No. 22.522(a) Marijuana Plants for Personal Use—Home Cultivation of More Than 10 and Not More Than 49 Plants

The defendant is charged with the crime of possession of more than ten (10) and no more than forty-nine (49) marijuana plants cultivated at his place of residence for defendant's personal use. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed more than 10 but no more than 49 marijuana plants cultivated at his place of residence for defendant's personal use.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed more than 10 but no more than 49 marijuana plants cultivated at his place of residence for defendant's personal use, then you shall find the defendant not guilty.

Instruction No. P22.522(a) Marijuana Plants for Personal Use—Home Cultivation of More Than 10 and Not More Than 49 Plants

You have found the defendant guilty of the crime of possession of more than ten (10) but not more than forty-nine (49) marijuana plants cultivated at his place of residence for defendant's personal use.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but for not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500.00; or**
- (3) Confinement in jail for not more than one (1) year and a fine of a specific amount, but not more than \$2,500.00.**

Instruction No. 22.522(b) Marijuana Plants for Personal Use—Home Cultivation of More Than 49 and Not More Than 100 Plants

The defendant is charged with the crime of possession of more than forty-nine (49) but not more than one hundred (100) marijuana plants cultivated at his place of residence for defendant's personal use. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed more than 49 but not more than 100 marijuana plants cultivated at his place of residence for defendant's personal use.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed more than 49 but not more than 100 marijuana plants cultivated at his place of residence for defendant's personal use, then you shall find the defendant not guilty.

Instruction No. P22.522(b) Marijuana Plants for Personal Use—Home Cultivation of More Than 49 and Not More Than 100 Plants

You have found the defendant guilty of the crime of possession of more than forty-nine (49) but not more than one hundred (100) marijuana plants cultivated at his place of residence for defendant's personal use.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in prison for a specific time, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but for not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500.00; or**
- (4) Confinement in jail for not more than twelve (12) months and a fine of a specific amount, but not more than \$2,500.00.**

Instruction No. 22.522(c) Marijuana Plants for Personal Use—Home Cultivation of More Than 100 Plants

The defendant is charged with the crime of possession of more than one hundred (100) marijuana plants cultivated at his place of residence for defendant's personal use. The Commonwealth must prove beyond a reasonable doubt that the defendant possessed more than 100 marijuana plants cultivated at his place of residence for defendant's personal use.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant possessed more than 100 marijuana plants cultivated at his place of residence for defendant's personal use, then you shall find the defendant not guilty.

Instruction No. P22.522(c) Marijuana Plants for Personal Use—Home Cultivation of More Than 100 Plants

You have found the defendant guilty of the crime of possession of more than one hundred (100) marijuana plants cultivated at his place of residence for defendant's personal use.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in prison for a specific time, but not less than one (1) year nor more than ten (10) years; or**
- (2) A fine of a specific amount, but not more than \$250,000; or**
- (3) Confinement in prison for not less than one (1) year nor more than ten (10) years and a fine of a specific amount, but not more than \$250,000.**

Instruction No. 22.523 Marijuana Plants for Personal Use—Home Cultivation—Multiple Violations

The defendant is charged with the crime of possession of more than four (4) but not more than ten (10) marijuana plants cultivated at his place of residence for defendant's personal use third [or subsequent] offense. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant possessed more than 4 but not more than 10 marijuana plants cultivated at his place of residence for defendant's personal use; and
- (2) That the defendant has committed two [or more] prior offenses for this crime.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the first element but has failed to prove the second element of the crime as charged, then you shall find the defendant guilty of possession of more than four (4) but not more than ten (10) marijuana plants cultivated at his place of residence for defendant's personal use [first or second] offense.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt the first element of the crime, then you shall find the defendant not guilty.

Instruction No. P22.523(a) Marijuana Plants for Personal Use—Home Cultivation—Multiple Violations

You have found the defendant guilty of possession of more than four (4) but not more than ten (10) marijuana plants cultivated at his place of residence for defendant's personal use third [or subsequent] offense.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but for not more than six (6) months; or**
- (2) A fine of a specific amount, but not more than \$1,000.00; or**
- (3) Confinement in jail for not more than six (6) months and a fine of a specific amount, but not more than \$1,000.00.**

Instruction No. P22.523(b) Marijuana Plants for Personal Use—Home Cultivation—Second Offense

You have found the defendant guilty of possession of more than four (4) but not more than ten (10) marijuana plants cultivated at his place of residence for defendant's personal use second offense.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a fine of a specific amount, but not more than \$500.00.

Instruction No. 22.524 Possessing or Consuming Marijuana or Marijuana Products—Public School Grounds During School Hours or School or Student Activities

The defendant is charged with the crime of [possessing or consuming] marijuana or marijuana products in or upon the grounds of a public elementary or secondary school during school hours or school or student activities. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [possessed or consumed] marijuana or marijuana products in or upon the grounds of a public elementary or secondary school; and**
- (2) That such [possession or consumption] occurred during school hours or school or student activities.**

If you find from the evidence that the Commonwealth has proved each of the elements of the crime beyond a reasonable doubt, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P22.524 Possessing or Consuming Marijuana or Marijuana Products—Public School Grounds During School Hours or School or Student Activities

You have found the defendant guilty of the crime of [possessing or consuming] marijuana or marijuana products in or upon the grounds of a public elementary or secondary school during school hours or school or student activities.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for not more than six (6) months; or**
- (2) A fine of a specific amount, but not more than \$1,000.00; or**
- (3) Confinement in jail for not more than six (6) months and a fine of a specific amount, but not more than \$1,000.00.**

Instruction No. 22.525 Consuming Marijuana or Marijuana Products—Public School Grounds After School Hours or School or Student Activities

The defendant is charged with the crime of consuming marijuana or marijuana products in or upon the grounds of a public elementary or secondary school after school hours or school or student activities. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant consumed marijuana or marijuana products in or upon the grounds of a public elementary or secondary school; and**
- (2) That such consumption occurred after school hours or school or student activities.**

If you find from the evidence that the Commonwealth has proved each of the elements of the crime beyond a reasonable doubt, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P22.525 Consuming Marijuana or Marijuana Products—Public School Grounds After School Hours or School or Student Activities

You have found the defendant guilty of the crime of consuming marijuana or marijuana products in or upon the grounds of a public elementary or secondary school after school hours or school or student activities.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for not more than six (6) months; or**
- (2) A fine of a specific amount, but not more than \$1,000.00; or**
- (3) Confinement in jail for not more than six (6) months and a fine of a specific amount, but not more than \$1,000.00.**

Instruction No. 22.526 Using or Consuming Marijuana or Marijuana Products While in a Motor Vehicle Being Driven on a Public Highway

The defendant is charged with the crime of [using or consuming] marijuana or marijuana products while driving a motor vehicle upon a public highway in the Commonwealth [or while being a passenger in a motor vehicle being driven upon a public highway of the Commonwealth]. The Commonwealth must prove beyond a reasonable doubt that the defendant [used or consumed] marijuana or marijuana products while driving a motor vehicle upon a public highway in the Commonwealth [or while being a passenger in a motor vehicle being driven upon a public highway of the Commonwealth].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant [used or consumed] marijuana or marijuana products while driving a motor vehicle upon a public highway in the Commonwealth [or while being a passenger in a motor vehicle being driven upon a public highway of the Commonwealth], then you shall find the defendant not guilty.

Instruction No. P22.526 Using or Consuming Marijuana or Marijuana Products While in a Motor Vehicle Being Driven on a Public Highway

You have found the defendant guilty of the crime of [using or consuming] marijuana or marijuana products while driving a motor vehicle upon a public highway in the Commonwealth [or while being a passenger in a motor vehicle being driven upon a public highway of the Commonwealth].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a fine of not more than \$250.

Instruction No. 22.527 Possessing or Consuming Marijuana or Marijuana Products While Operating a School Bus

The defendant is charged with the crime of [possessing or consuming] marijuana or marijuana products while operating a school bus and transporting children. The Commonwealth must prove beyond a reasonable doubt that the defendant [possessed or consumed] marijuana or marijuana products while operating a school bus and transporting children.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant [possessed or consumed] marijuana or marijuana products while operating a school bus and transporting children, then you shall find the defendant not guilty.

Instruction No. P22.527 Possessing or Consuming Marijuana or Marijuana Products While Operating a School Bus

You have found the defendant guilty of the crime of [possessing or consuming] marijuana or marijuana products while operating a school bus and transporting children.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for not more than one (1) year; or**
- (2) A fine of a specific amount, but not more than \$2,500.00; or**
- (3) Confinement in jail for not more than one (1) year and a fine of a specific amount, but not more than \$2,500.00.**

Instruction No. 22.528 Carrying Marijuana or Marijuana Products in Motor Vehicle Used or Licensed to Transport Passengers for Hire

The defendant is charged with the crime of transporting marijuana or marijuana products in a motor vehicle that was being used [or was licensed] for the transportation of passengers for hire. The Commonwealth must prove beyond a reasonable doubt that the defendant transported marijuana or marijuana products in a motor vehicle that was being used [or was licensed] for the transportation of passengers for hire.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant transported marijuana or marijuana products in a motor vehicle that was being used or was licensed for the transportation of passengers for hire, then you shall find the defendant not guilty.

Instruction No. P22.528 Carrying Marijuana or Marijuana Products in Motor Vehicle Used or Licensed to Transport Passengers for Hire

You have found the defendant guilty of the crime of transporting marijuana or marijuana products in a motor vehicle that was being used [or was licensed] for the transportation of passengers for hire.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for not more than one (1) year; or**
- (2) A fine of a specific amount, but not more than \$2,500.00; or**
- (3) Confinement in jail for not more than one (1) year and a fine of a specific amount, but not more than \$2,500.00.**

Instruction No. 22.600 Schedule I, II, III or IV Controlled Substance, Marijuana—Distribution to Persons Under 18

The defendant is charged with the crime of [distributing; causing a person under 18 years of age to assist in distributing] [marijuana; (name of drug which is a Schedule I, II, III or IV controlled substance)] **to a person under 18 years of age, who is at least 3 years younger than the defendant. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That the defendant knowingly or intentionally** [distributed; caused a person under 18 years of age to assist in distributing] [marijuana; (name of drug)] **to** (name of person to whom distribution was made); **and**
- (2) That** (name of person to whom distribution was made) **was under the age of 18 years at the time of the distribution and at least 3 years younger than the defendant; and**
- (3) That the defendant was, at the time of distribution, at least 18 years of age.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P22.600 Schedule I, II, III or IV Controlled Substance, Marijuana—Distribution to Persons Under 18

You have found the defendant guilty of the crime of [distributing; causing a person under 18 years of age to assist in distributing] [marijuana; (name of drug which is a Schedule I, II, III, or IV controlled substance),] to a person under 18 years of age, who is at least 3 years younger than the defendant.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at not less than ten (10) years nor more than fifty (50) years, and a fine of a specific amount, but not more than \$100,000.

Instruction No. 22.610 Methamphetamine Precursor Chemicals—Possession with Intent to Manufacture Methamphetamine, Methcathinone or Amphetamine

The defendant is charged with the crime of possessing substances with intent to manufacture methamphetamine, methcathinone or amphetamine.

The Commonwealth must prove beyond a reasonable doubt: (1) that the defendant possessed [names of two or more substances listed in Va. Code Ann. § 18.2-248(J)]; and (2) that the defendant possessed these substances with the intent to manufacture methamphetamine, methcathinone or amphetamine.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the above elements, then you shall find the defendant not guilty.

Instruction No. P22.610 Methamphetamine Precursor Chemicals—Possession with Intent to Manufacture Methamphetamine, Methcathinone or Amphetamine

You have found the defendant guilty of the crime of possessing substances with the intent to manufacture methamphetamine, methcathinone or amphetamine.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.650 Controlled Substance, Imitation Controlled Substance, Marijuana— Manufacture, Distribution, or Possession With Intent to Distribute on or Near Educational, Child Day Center or Recreational Property

The defendant is charged with the crime of [distributing; manufacturing; possessing with intent to distribute] [marijuana; (name of controlled substance); (name of imitation controlled substance)] [on school property; on licensed child day center property; within 1000 feet of school property; within 1000 feet of licensed child day center property; on a school bus; at a school bus stop; within 1000 feet of a bus stop during the time when school children are waiting to be picked up or are being dropped off; upon property of a recreation or community center; upon property of a public library; upon property of a state facility or within 1000 feet of such institution]. **The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

(1) That the defendant [distributed; manufactured; possessed with intent to distribute] [marijuana; (name of controlled substance); (name of imitation controlled substance)]; **and**

(2) That the [distribution; manufacture; possession with intent to distribute] **was upon** [property of a school; property of a licensed child day center; [public property; property open to public use] within 1000 feet of a [school; licensed child day center]; a school bus; a designated school bus stop; [public property; property open to public use] within 1000 feet of the bus stop when children are [waiting to be picked up and transported; being dropped off] from school or school sponsored activity; the property of any [public library; publicly owned or operated recreation or community center]; property of a state facility; [public property; property open to public use] within 1000 feet of a state facility.]

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P22.650 Controlled Substance, Imitation Controlled Substance, Marijuana— Manufacture, Distribution, or Possession With Intent to Distribute on or Near Educational, Child Day Center or Recreational Property

You have found the defendant guilty of the felony of [distributing; manufacturing; possessing with intent to distribute] [marijuana; (name of controlled substance); (name of imitation controlled substance)] [upon school property; upon licensed child day center property; within 1000 feet of school property; within 1000 feet of licensed child day center property; on a school bus; at a school bus stop; within 1000 feet of a bus stop during the time when school children are waiting to be picked up or are being dropped off; upon property of a publicly owned or operated recreation or community center; upon property of a public library; upon property of a state facility; within 1000 feet of a state facility].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at imprisonment for a specific term, but not less than one (1) year nor more than five (5) years and a fine of a specific amount, but not more than \$100,000.

Instruction No. 22.700 Drug Paraphernalia— Sale or Possession With Intent to Sell

The defendant is charged with the crime of [selling; possessing with intent to sell] drug paraphernalia. The Commonwealth must prove beyond a reasonable doubt that the defendant [sold; possessed with intent to sell] drug paraphernalia.

Drug paraphernalia means any equipment, product or material either designed for use or intended by the defendant for use in [processing; growing; packaging; introducing into the human body] [a controlled substance; marijuana].

If you find from the evidence that the defendant [sold; possessed with intent to sell] drug paraphernalia, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant [sold; possessed with intent to sell] drug paraphernalia, then you shall find the defendant not guilty.

Instruction No. P22.700 Drug Paraphernalia— Sale or Possession With Intent to Sell

You have found the defendant guilty of [selling; possessing with intent to sell] drug paraphernalia.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.701 Drug Paraphernalia— Sale to Person Who Is At Least 3 Years Younger Than The Defendant

The defendant is charged with the crime of selling drug paraphernalia to a person under 18 years of age who is at least 3 years younger than the defendant. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant sold drug paraphernalia to (name of person to whom paraphernalia was sold); and**
- (2) That (name of person to whom paraphernalia was sold) was under the age of 18 years at the time of the distribution and at least 3 years younger than the defendant; and**
- (3) That the defendant, at the time of the sale, was at least eighteen (18) years of age.**

If you find from the evidence that the Commonwealth has proved each of the elements of the crime set out above beyond a reasonable doubt, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove one or more of these elements beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P22.701 Drug Paraphernalia— Sale to Person Who Is At Least 3 Years Younger Than The Defendant

You have found the defendant guilty of the crime of selling drug paraphernalia to (name of person to whom paraphernalia was sold), a person who is at least 3 years younger than the defendant.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.702 Drug Paraphernalia— Definition

“Drug paraphernalia” means any equipment, product or material either designed for use or intended by the defendant for use in [processing; growing; packaging; introducing into the human body] [a controlled substance; marijuana].

Instruction No. 22.720 Drug Paraphernalia— Possession

The defendant is charged with the crime of possession of drug paraphernalia. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant possessed** (name of drug paraphernalia listed in Va. Code Ann. § 54.1-3466);
and
- (2) That he did so under circumstances which reasonably indicated an intention to use the** (name of drug paraphernalia listed in Va. Code Ann. § 54.1-3466) **for purposes of illegally administering any controlled drug.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P22.720 Drug Paraphernalia— Possession

You have found the defendant guilty of the crime of possession of drug paraphernalia.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.740 Drug Paraphernalia— Sale to Minor of Printed Matter Advertising Instruments for Administering Marijuana or Controlled Substances

The defendant is charged with the crime of [selling; distributing; displaying for sale] to a minor printed matter which advertised drug paraphernalia. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant knowingly [sold; distributed; displayed for sale] printed matter;**
- (2) To a person under the age of 18 years; and**
- (3) That he knew the printed matter advertised drug paraphernalia for sale.**

“Drug paraphernalia” means any instrument, device, article or contrivance advertised for use in unlawfully ingesting, smoking, administering, preparing or growing marijuana or a controlled substance.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P22.740 Drug Paraphernalia— Sale to Minor of Printed Matter Advertising Instruments for Administering Marijuana or Controlled Substances

You have found the defendant guilty of the crime of selling to a minor printed matter which advertised drug paraphernalia.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.800 Imitation Controlled Substance—Manufacturing, Selling, Giving, Distributing, or Possessing With Intent to Manufacture, Sell, Give or Distribute

The defendant is charged with the crime of [distributing; manufacturing; selling; giving; possessing with intent to sell, give or distribute] an imitation controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant [distributed; manufactured; sold; gave; possessed with intent to sell, give or distribute] an imitation controlled substance.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant [distributed; manufactured; sold; gave; possessed, with intent to sell, give or distribute] an imitation controlled substance, then you shall find the defendant not guilty.

Instruction No. P22.800 Imitation Controlled Substance—Manufacturing, Selling, Giving, Distributing, or Possessing With Intent to Manufacture, Sell, Give or Distribute

You have found the defendant guilty of the crime of [distributing; manufacturing; selling; giving; possessing with intent to sell, give or distribute] an imitation controlled substance.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 22.805 Imitation Controlled Substance—Definition

An imitation controlled substance is a pill, capsule, tablet, or substance in any form which is not a controlled substance subject to abuse and which [by overall appearance, including dosage, color shape, size, marking, packaging, or representations cause the likelihood that it will be mistaken for a controlled substance; by express or implied representations purports to act like a controlled substance as stimulant or depressant of the central nervous system, and which is not commonly used or recognized for use for any purpose other than for such stimulant or depressant effect].

Instruction No. 22.900 Anabolic Steroid— Manufacturing, Selling, Giving, Distributing, or Possessing With Intent to Manufacture, Sell, Give or Distribute

The defendant is charged with the crime of knowingly [distributing; manufacturing; possessing with intent to distribute] an anabolic steroid. The Commonwealth must prove beyond a reasonable doubt that the defendant knowingly [distributed; manufactured; possessed with intent to distribute] an anabolic steroid.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant knowingly [distributed; manufactured; possessed with intent to distribute] an anabolic steroid, then you shall find the defendant not guilty.

Instruction No. P22.900 Anabolic Steroid— Manufacturing, Selling, Giving, Distributing, or Possessing With Intent to Manufacture, Sell, Give or Distribute

You have found the defendant guilty of the crime of [distributing; manufacturing; possessing with intent to distribute] an anabolic steroid.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$20,000; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$20,000.**

Instruction No. 22.910 Transporting Controlled Substances Into The Commonwealth

The defendant is charged with the crime of transporting into the Commonwealth by any means with intent to sell or distribute [one ounce or more of cocaine, coca leaves or any salt, compound, derivative or preparation thereof; one ounce or more of any Schedule I or II controlled substance; five or more pounds of marijuana] The Commonwealth must prove beyond a reasonable doubt that the defendant transported into the Commonwealth by any means with intent to sell or distribute (name and triggering quantity of drug).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt that the defendant:

- (1) Transported by any means;**
- (2) (Name and triggering quantity of drug);**
- (3) Into the Commonwealth;**
- (4) With intent to sell or distribute.**

Then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements above, then you shall find the defendant not guilty.

Instruction No. P22.910 Transporting Controlled Substances Into The Commonwealth

You have found the defendant guilty of the crime of transporting into the Commonwealth by any means with intent to sell or distribute (name and triggering quantity of drug).

You shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than forty (40) years and a fine of a specific amount, but not more than \$1,000,000.

Instruction No. 23.100 Embezzlement

The defendant is charged with the crime of embezzlement. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant wrongfully and fraudulently** [converted to his own use; converted to the use of another; used; disposed of; concealed] (describe property) **with the intent to permanently deprive the rightful owner of the use thereof; and**
- (2) That the property was** [received by the defendant [for another; for his employer; for his principal; for his bailor; by virtue of his [office; trust; employment]]; entrusted or delivered to the defendant by [another; a court; a corporation; a company]]; **and**
- (3) That the value of the property was \$1,000 or more.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty of felony embezzlement, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime but has not proved beyond a reasonable doubt that the value of the property was \$1,000 or more, and if you find beyond a reasonable doubt that the property was of some value (there need be no proof of a minimum or specific value), then you shall find the defendant guilty of misdemeanor embezzlement, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements of the crime, or that the Commonwealth has failed to prove beyond a reasonable doubt that the property was of some value, then you shall find the defendant not guilty.

Instruction No. P23.100(a) Embezzlement (Felony)

You have found the defendant guilty of the crime of embezzlement.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P23.100(b) Embezzlement (Misdemeanor)

You have found the defendant guilty of the crime of embezzlement.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 23.200 Converted—Definition

“Converted” means the unauthorized and wrongful exercise of dominion and control over another’s personal property, to the exclusion of or inconsistent with the rights of the owner.

Instruction No. 24.100 Extortion—General

The defendant is charged with the crime of extortion. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [made a threat of injury to the (person; character; property) of another; accused another person of any offense; threatened to report another person as being illegally present in the United States; or knowingly destroyed, concealed, removed, confiscated, withheld, or threatened to withhold, an actual or purported passport or immigration document of another]; **and**

(2) That such [threat; accusation; action] **caused the person** [threatened; accused; affected] **or any other person to part with** [money; property; a pecuniary benefit; a note; a bond; other evidence of debt]; **and**

(3) That the [money; property; pecuniary benefit; note; bond; other evidence of debt] **was given by the person** [threatened; accused; affected] **or any other person** [to the defendant; to someone designated by the defendant].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P24.100 Extortion—General

You have found the defendant guilty of the felony of extortion.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 24.200 Stalking (Subsequent Offense)

The defendant is charged with the crime of stalking. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant on more than one (1) occasion engaged in conduct directed at (name of person);**
- (2) That the defendant** [by his conduct intended to place; knew, or reasonably should have known, that the conduct placed] (name of person) **in reasonable fear of** [death; criminal sexual assault; bodily injury] **to** [(name of person); a member of (name of person)'s family or household];
- (3) That the defendant has been convicted of stalking on a prior occasion;**
- (4) That the prior conviction occurred within the past five (5) years.**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, you shall find the defendant not guilty.

Instruction No. P24.200 Stalking (Subsequent Offense)

You have found the defendant guilty of stalking.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 24.500 Threats—General

The defendant is charged with the crime of threatening another person with [death; bodily injury]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant knowingly communicated [in writing; by an electronically transmitted communication producing a visual or electronic message] to (name recipient); and
- (2) That the [written communication; electronically transmitted communication producing a visual or electronic message] contained a threat to [kill; do bodily harm to] [(name recipient); any member of (name recipient)'s family]; and
- (3) That the threat to [kill; do bodily harm] placed (name recipient) [in reasonable fear of death or bodily harm; in reasonable fear of death or bodily harm to a member of (name recipient)'s family].

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P24.500 Threats—General

You have found the defendant guilty of the felony of threatening another person with [death; bodily injury].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 24.600 Threats on School Grounds, on School Buses, or at School-Sponsored Events

The defendant is charged with the crime of threatening [death; bodily injury] **to** [a person; persons] [on school grounds; at a school-sponsored event; on a school bus]. **The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

(1) That the defendant communicated [in writing; by an electronically transmitted communication producing a visual or electronic message] **to** (name recipient); **and**

(2) That the [written communication; electronically transmitted communication producing a visual or electronic message] **contained a threat to** [kill; do bodily harm to (name recipient)]; **and**

(3) That the threatened action was to take place [on the grounds or premises of [an elementary; a middle; a secondary] school; on a school bus; at [an elementary; a middle; a secondary] school event]; **and**

(4) That the threat to [kill; do bodily harm] [placed (name recipient) in reasonable apprehension of death or bodily harm; would place the person who is the object of the threat in reasonable apprehension of bodily harm if received, regardless of whether that person actually received the threat].

If you find that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P24.600 Threats on School Grounds, on School Buses, or at School-Sponsored Events

You have found the defendant guilty of the felony of threatening [death; bodily harm] [on school grounds; on a school bus; at a school-sponsored event].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 24.700 Threats to Intimidate the Population at Large

The defendant is charged with the crime of threatening to intimidate the population at large. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant communicated** [in writing; by an electronically transmitted communication producing a visual or electronic message] **to** (name recipient); **and**
- (2) That the** [written communication; electronically transmitted communication producing a visual or electronic message] **contained a threat to kill or do serious bodily injury to another; and**
- (3) That the defendant made such threat with the intent to** [intimidate a civilian population at large; influence the conduct or activities of [the government of the United States; a state; a locality] through intimidation; compel the emergency evacuation, or avoidance, of [any place of assembly; any building; any structure; any means of mass transportation]]; **and**
- (4) That the defendant was 18 years of age or older at the time the alleged communication(s) was/were made.**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P24.700 Threats to Intimidate the Population at Large

You have found the defendant guilty of the felony of threatening to intimidate the population at large.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 26.200 Failure to Perform Promise to Deliver Crop

The defendant is charged with the crime of failure to perform a promise to deliver his [crop; (name other property)] in return for an advance of [money; merchandise; (name thing of value)]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

- (1) That the defendant obtained an advance of [money; merchandise; (name thing of value)] of the value of \$1000 or more from another person by promising in writing to send or deliver his [crop; (name other property)] to such person; and**
- (2) That the defendant, with intent to defraud, failed or refused to perform this promise; and**
- (3) That the defendant failed to [repay; return to] such person the [money; merchandise; (name thing of value)] advanced to him.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P26.200 Failure to Perform Promise to Deliver Crop

You have found the defendant guilty of the crime of failure to perform a promise to deliver his [crop; (name other property)] in return for an advance of [money; merchandise; (name thing of value)].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, for not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 26.250 Failure to Perform Promise for Construction, Etc.

The defendant is charged with the crime of failure to perform a promise to [construct; remove; repair; improve] in return for an advance of [money; merchandise; (name thing of value)]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

- (1) That the defendant, with intent to defraud, obtained from another person an advance of [money; merchandise; (name thing of value)] of the value of \$1000 or more upon a promise to perform [construction; removal; repair; improvement] of any [building; structure permanently annexed to real property; other improvements to such real property]; and**
- (2) That the defendant failed or refused to perform such promise and failed to substantially make good such advance; and**
- (3) That the defendant failed to return the advance within fifteen (15) days of a request to do so sent by certified mail, return receipt requested, to [his last known address; the address listed in the contract].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P26.250 Failure to Perform Promise for Construction, Etc.

You have found the defendant guilty of the crime of failure to perform a promise to [construct; remove; repair; improve] in return for an advance of [money; merchandise; (name thing of value)].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, for not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 26.260 Defrauding Hotels, Restaurants, Etc.

The defendant is charged with the crime of felony defrauding the owner or keeper of a [hotel; motel; campground; boarding house; restaurant; eating establishment]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

(1) That the defendant, without paying, and with intent to cheat or defraud the owner or keeper, did stay at a [hotel; motel; campground boardinghouse]; obtained food from a [restaurant; eating house]; gained entrance to an [amusement park]. [OR] (1) That the defendant, with intent to cheat or defraud, and without having an express agreement for credit did procure [food; entertainment; accommodation] from any [hotel; motel; campground; boarding house; restaurant; eating house]. [OR] (1) That the defendant, with intent to cheat or defraud the owner or keeper out of pay, did obtain credit at a [hotel; motel; campground; boarding house; restaurant; eating house] for [food; entertainment; accommodation] by means of any false show of baggage or effects brought thereto. [OR] (1) That the defendant, with intent to cheat or defraud, did obtain credit at a [hotel; motel; campground; boardinghouse; restaurant; eating house; amusement park] for [food; entertainment; accommodation] through any misrepresentation or false statement. [OR] (1) That the defendant, with intent to cheat or defraud, did [remove; cause to be removed] any baggage or effects from a [hotel; motel; campground; boardinghouse; restaurant; eating house] while there was a lien existing thereon for the proper charges due from him for fare and board furnished. AND (2) The value of the service, credit or benefit procured or obtained was \$1000 or more.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of felony defrauding, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has proved beyond a reasonable doubt element (1) of the elements of the crime, but has failed to prove beyond a reasonable doubt that the value of the service, credit, or benefit procured or obtained is \$1000 or more, you shall convict the defendant of misdemeanor defrauding [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt element (1) of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P26.260 Defrauding Hotels, Restaurants, Etc.

You have found the defendant guilty of the crime of [defrauding a hotel, etc.; obtaining food from a restaurant; gaining entrance to an amusement park; procuring food, etc. without express agreement for credit; obtaining credit at hotel, etc. by means of false show of baggage or effects; remove or cause to be removed any baggage or effects from a hotel, etc. (while subject to a lien)] with intent to cheat or defraud.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, for not less than one (1) year nor more than ten (10) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 26.270 Fraudulent Conversion or Removal of Leased Personal Property

The defendant is charged with the crime of felony fraudulent [conversion; removal] of leased personal property. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

- (1) The defendant was in possession or control of the personal property by virtue of or subject to a written lease of such property; and**
- (2) the defendant, with intent to defraud, did [sell; secrete; destroy; dispose of for his own use; remove from the Commonwealth without the written consent of the lessor] the property [fail to return the property to the lessor within 30 days after expiration of the lease or rental period].**
- (3) The value of the property was \$1000 or more.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has proved beyond a reasonable doubt element (1) and (2) above, but has not proved the value of the property to be \$1000 or more, then you shall find the defendant guilty of misdemeanor fraudulent [conversion; removal] [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements (1) and (2) of the crime, then you shall find the defendant not guilty.

Instruction No. P26.270 Fraudulent Conversion or Removal of Leased Personal Property

You have found the defendant guilty of the crime of fraudulent [conversion; removal] of leased property.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, for not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 26.280 Evidence of Intent to Defraud

You may consider as evidence of an intent to defraud the fact that the defendant signed the lease or rental agreement with a name other than his own, or failed to return such property to the person or business he leased it from within 30 days after the giving of written notice to the defendant that the lease or rental period for the property had expired.

Notice mailed by certified mail and addressed to the defendant at the address the defendant stated in the lease shall be sufficient giving of written notice.

Instruction No. 26.300 Governmental Fraud— Misrepresentation

The defendant is charged with the crime of defrauding the government. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

(1) That the defendant knowingly [falsified; concealed; misled; covered up by a trick, scheme or device] **a material fact; and**

(2) That he did so in a commercial dealing with [any department or agency of the Commonwealth of Virginia; any local government within the Commonwealth of Virginia or any department or agency thereof].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P26.300 Governmental Fraud— Misrepresentation

You have found the defendant guilty of the crime of defrauding the government.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 26.400 Filing False Lien or Encumbrance Against Another

The defendant is charged with the crime of filing a false [lien; encumbrance] against another. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

(1) That the defendant maliciously filed a [lien; encumbrance] in a public record against the [real; personal] property of another; and

(2) That the defendant knew that such [lien; encumbrance] was false.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P26.400 Filing False Lien or Encumbrance Against Another

You have found the defendant guilty of the crime of filing a false [lien; encumbrance] against another.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 26.500 Money Laundering— Financial Transaction

The defendant is charged with the crime of money laundering. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

- (1) That the defendant knowingly conducted a financial transaction; and**
- (2) That the defendant knew that the property involved in the transaction represented the proceeds of** (name of felony under the laws of the Commonwealth, another state or territory of the United States, the District of Columbia, or the United States).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt both of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P26.500 Money Laundering— Financial Transaction

You have found the defendant guilty of the crime of money laundering.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not more than forty (40) years; or**
- (2) A fine of a specific amount, but not more than \$500,000; or**
- (3) A specific term of imprisonment but not more than forty (40) years, and a fine of a specific amount but not more than \$500,000.**

Instruction No. 26.600 Financial Transaction— Definition

“Financial transaction” means any purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, transportation, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of monetary instruments, use of a safe-deposit box, or any other acquisition or disposition of monetary instruments by any means including the movement of funds by wire or other electronic means, which is knowingly designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the property involved in the transaction.

Instruction No. 26.700 Money Laundering— Conversion of Cash Into Negotiable Instruments or Electronic Funds

The defendant is charged with the crime of money laundering. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

- (1) That the defendant converted cash into [negotiable instruments; electronic funds] for another; and**
- (2) That the defendant knew that the cash was proceeds of some form of activity that is punishable as a felony of (name of felony under the laws of the Commonwealth, another state or territory of the United States, the District of Columbia, or the United States); and**
- (3) That the defendant converted the cash for compensation.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty[, but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P26.700 Money Laundering— Conversion of Cash Into Negotiable Instruments or Electronic Funds

You have found the defendant guilty of the crime of money laundering.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 27.100 Obtaining Signature by False Pretense

The defendant is charged with the crime of obtaining a signature by false pretense. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

- (1) That the defendant made a false representation of a past event or existing fact; and**
- (2) That when the false representation was made the defendant intended to defraud (name of person); and**
- (3) That because of the false representation, (name of person) signed a writing; and**
- (4) That it was to the prejudice of another's right.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P27.100 Obtaining Signature by False Pretense

You have found the defendant guilty of the crime of obtaining a signature by false pretense.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 27.150 Obtaining Money or Property by False Pretense

The defendant is charged with the crime of obtaining [money; property; a gift certificate] by false pretenses. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant made a false representation of a past event or existing fact; and**
- (2) When the false representation was made, the defendant intended to defraud (name of person); and**
- (3) That because of the false representation, the defendant obtained possession [and title] of [money; property; a gift certificate] from (name of person); and**
- (4) That the [money; property; gift certificate] obtained was worth \$1000 or more.**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first three elements of the crime as charged, but has not proved beyond a reasonable doubt that such property was \$1000 or more, and if you find beyond a reasonable doubt that such property was of some value (there need be no proof of a minimum or specific value), then you shall find the defendant guilty of the misdemeanor of larceny by false pretenses, but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P27.150(a) Obtaining Money or Property by False Pretense (Felony)

You have found the defendant guilty of the crime of obtaining money by false pretense.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months; and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P27.150(b) Obtaining Money or Property by False Pretense (Misdemeanor)

You have found the defendant guilty of the crime of obtaining money by false pretense.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months; and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 27.200 Obtaining or Attempting to Obtain Drug By Using False Name

The defendant is charged with the crime of [obtaining; attempting to obtain] a drug by the use of a false name. The Commonwealth must prove beyond a reasonable doubt that the defendant intentionally used a false name [to obtain; in attempting to obtain] any drug.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant intentionally used a false name [to obtain; in attempting to obtain] any drug, then you shall find the defendant not guilty.

Instruction No. P27.200 Obtaining or Attempting to Obtain Drug By Using False Name

You have found the defendant guilty of the crime of [obtaining; attempting to obtain] any drug by the use of a false name.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 27.300 Promises or Statements of Intention—Definition

The false pretense must be a representation as to an existing fact or past event. False representations which are promises or statements of intention referring to future events are not grounds for a conviction, even though such a false representation caused [the owner; the person entitled to possession] to part with his [money; property]. But if false representations are made, some of which refer to existing facts or past events, while others refer solely to future events, you may find the defendant guilty if it is shown that any of the representations as to existing facts or past events induced [the owner; the person entitled to possession] to part with his [money; property], and provided the Commonwealth has also proved beyond a reasonable doubt the other elements of the crime.

Instruction No. 27.500 Identity Theft

The defendant is charged with the crime of identity theft. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

- (1) That the defendant, without the authorization or permission of** (insert name of person or persons who are the subject of the identifying information) [obtained, recorded, or accessed identifying information of (insert name of person or persons who are the subject of the identifying information) which was not available to the general public and which would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of (insert name of person or persons who are the subject of the identifying information); obtained money, credit, loans, goods or services through the use of identifying information of (insert name of person or persons who are the subject of the identifying information); obtained identification documents in the name of (insert name of person or persons who are the subject of the identifying information); or obtained, recorded, or accessed identifying information of (insert name of person or persons who are the subject of the identifying information) while impersonating a law-enforcement officer or an official of the government of the Commonwealth]; **and**
- (2) That the defendant acted with the intent to defraud at the time he** [obtained, recorded or accessed such identifying information; obtained such money, credit, loans, goods or services through the use of identifying information; obtained such identification documents; or obtained, recorded, or accessed such identifying information while impersonating a law-enforcement officer or an official of the government of the Commonwealth]; **and**
- (3) That the defendant** [obtained, recorded, or accessed such identifying information; obtained such money, credit, loans, goods or services; obtained such identification documents; or obtained, recorded or accessed such identifying information while impersonating a law-enforcement officer or an official of the government of the Commonwealth] **for his own use or the use of a third person; and**
- (4) That such identity theft resulted in financial loss of \$1000 or more.**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P27.500(a) Identity Theft (Felony)

You have found the defendant guilty of the crime of felony identity theft.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months; and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P27.500(b) Identity Theft (Misdemeanor)

You have found the defendant guilty of the crime of misdemeanor identity theft.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months; and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 28.100 Using False Statement to Obtain Property or Credit

The defendant is charged with using a false statement to obtain property or credit. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

- (1) That the defendant knew that a false statement had been made in writing; and**
- (2) That the false statement concerned the financial condition or ability to pay of [the defendant; any person for whom he was acting; any firm or corporation in which he was interested; any firm or corporation for which he was acting]; and**
- (3) That the defendant, with the intent to defraud, procured, upon the faith of the false statement, any [delivery; payment; loan; credit; extension; discount making; acceptance; sale; endorsement] for [his own benefit; the benefit of any person for whom he was acting; any firm or corporation in which he was interested; any firm or corporation for which he was acting]; and**
- (4) That the [value of the thing; the amount of the loan, credit or benefit] obtained was \$1000 or more.**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P28.100 Using False Statement to Obtain Property or Credit

You have found the defendant guilty of the crime of using a false statement to obtain property or credit.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months; and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 29.100 Bigamy—Second Marriage in Virginia

The defendant is charged with the crime of bigamy. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant entered into a marriage with (name of second spouse) in Virginia; and**
- (2) That at the time the defendant was still married to (name of first spouse) who was still living.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.100 Bigamy—Second Marriage in Virginia

You have found the defendant guilty of the crime of bigamy.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 29.120 Bigamy—Second Marriage Outside Virginia

The defendant is charged with the crime of bigamy. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant entered into a marriage with (name of second spouse) outside of Virginia; and**
- (2) That at the time the defendant was still married to (name of first spouse) who was still living; and**
- (3) That the defendant and (name of second spouse) after their marriage lived in Virginia as husband and wife.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.120 Bigamy—Second Marriage Outside Virginia

You have found the defendant guilty of the crime of bigamy.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 29.140 Bigamy—Reasonable Belief in Death of First Spouse

If you find from the evidence that at the time of the second marriage the defendant reasonably believed (name of first spouse) was dead, then you shall find the defendant not guilty.

Instruction No. 29.200 Lascivious—Definition

Lascivious means a state of mind that is eager for sexual indulgence, desirous of inciting to lust or of inciting sexual desire and appetite.

Instruction No. 29.300 Taking Indecent Liberties With Children—Indecent Exposure With Lascivious Intent

The defendant is charged with the crime of indecent exposure with lascivious intent to a child. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant:

[(a) knowingly and intentionally exposed his sexual or genital parts to (name of child) who was at the time under the age of fifteen (15); or

(b) knowingly and intentionally proposed that (name of child), who was at the time under the age of 15, expose [his/her] sexual or genital parts to the defendant;]; **and**

(2) That the defendant acted with lascivious intent; and

(3) That the defendant was 18 or older at the time.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.300 Taking Indecent Liberties With Children—Indecent Exposure With Lascivious Intent

You have found the defendant guilty of the crime of indecent exposure with lascivious intent to a child.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 29.320 Taking Indecent Liberties With Children by Person in Custodial or Supervisory Relationship

The defendant is charged with the crime of taking indecent liberties with a child with whom he maintained a custodial or supervisory relationship. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant, with lascivious intent, knowingly and intentionally** [proposed that the child feel or fondle the sexual or genital parts of the defendant; proposed that the defendant feel or handle the sexual or genital parts of the child; proposed to the child the performance of an act of sexual intercourse, anal intercourse, cunnilingus, fellatio, anilingus, or any act constituting an offense under Va. Code Ann. § 18.2-361; exposed [his; her] sexual or genital parts to the child; proposed to the child that the child engage in [sexual intercourse; sodomy; fondling of sexual or genital parts with another person]; sexually abused the child by (description of an act defined as sexual abuse in Va. Code § 18.2-67.10(6))]; **and**
- (2) That the child was under the age of 18 at the time; and**
- (3) That the defendant was 18 or older at the time;**
- (4) That the defendant at the time maintained a custodial or supervisory relationship over** (name of child); **and**
- (5) The defendant at the time was not married to** (name of child).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.320 Taking Indecent Liberties With Children by Person in Custodial or Supervisory Relationship

You have found the defendant guilty of the crime of taking indecent liberties with a child with whom he maintained a custodial or supervisory relationship.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 29.330 Child Abuse or Neglect— Serious Injury

The defendant is charged with the crime of child abuse or neglect resulting in serious injury. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was a parent, guardian, or other person responsible for the care of (name of victim); and**
- (2) That the (name of victim) was a child under the age of 18; and**
- (3) That the defendant, by willful act, or willful omission, or refusal to provide any necessary care for the health of (name of victim), caused or permitted serious injury to the life or health of (name of victim).**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.330 Child Abuse or Neglect —Serious Injury

You have found the defendant guilty of the crime of child abuse or neglect resulting in serious injury.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.

Instruction No. 29.340 Child Abuse or Neglect— No Serious Injury

The defendant is charged with the crime of child abuse or neglect. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was a parent, guardian, or other person responsible for the care of (name of victim); and**
- (2) That (name of victim) was a child under the age of 18; and**
- (3) That the defendant's willful act or omission in the care of (name of victim), was so gross, wanton and culpable as to show a reckless disregard for human life.**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.340 Child Abuse or Neglect —No Serious Injury

You have found the defendant guilty of the crime of child abuse or neglect.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 29.350 Serious Injury— Definition

Serious injury shall include, but not be limited to: (i) disfigurement; (ii) a fracture; (iii) a severe burn or laceration; (iv) mutilation; (v) maiming; (vi) forced ingestion of dangerous substances; or (vii) life threatening internal injuries.

Instruction No. 29.360 Willful—Definition

A willful act is one done with a bad purpose, or without justifiable excuse, or without ground for believing it is lawful. A willful act is intentional, or knowing, or voluntary, as distinguished from accidental. The terms “bad purpose” or “without justifiable excuse” require knowledge that the particular conduct will likely result in injury or illegality.

Instruction No. 29.370 Child Cruelty or Endangerment

The defendant is charged with the crime of child [cruelty; endangerment]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime.

- (1) That the defendant [employed, had custody] of [name of child], who was a child under the age of 18;**
- (2) That the defendant willfully or negligently caused or permitted:**
 - (a) the life of such child to be endangered; and/or**
 - (b) the health of such child to be injured; and/or**
 - (c) the child to be beaten or cruelly treated.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of child cruelty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.370 Child Cruelty or Endangerment

You have found the defendant guilty of the crime of Child Cruelty.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500.00; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.00.**

Instruction No. 29.380 Criminal Negligence

Criminal negligence is a standard that is higher than mere lack of ordinary care. Criminal negligence consists of a reckless or indifferent disregard of human life, under circumstances reasonably calculated to produce serious injury or death, or which make it probable that serious injury or death will occur. To constitute criminal negligence, the Commonwealth must show that the defendant knew or should have known that the probable result of his acts would be a serious injury or death to the child.

Instruction No. 29.400 Production, etc., of Child Pornography

The defendant is charged with the crime of production of child pornography. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant:

- [(a) [enticed; accosted; solicited] (name of child) with intent [to induce; to force] him [to perform in; to be a subject of] child pornography; or,
 - (b) [produced; made; attempted or prepared to make] child pornography; or,
 - (c) knowingly [took part in; participated in] [the filming; the photographing or other production] of child pornography; or,
 - (d) knowingly [financed; attempted or prepared to finance] child pornography] **and,**
- (2) That (name of child) was less than 18 years of age.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.400 Production, etc., of Child Pornography

You have found the defendant guilty of the crime of producing child pornography.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years.

Instruction No. 29.410 Possession of Child Pornography

The defendant is charged with the crime of possession of child pornography. The Commonwealth must prove beyond a reasonable doubt that the defendant knowingly possessed child pornography.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the above element of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt the above element of the crime, then you shall find the defendant not guilty.

Instruction No. P29.410 Possession of Child Pornography

You have found the defendant guilty of the crime of possession of child pornography.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than (5) five years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 29.420(a)(1) Distribution, etc., of Child Pornography

The defendant is charged with the crime of [distributing; reproducing; selling; giving away; displaying; electronically transmitting; purchasing; or possessing with the intent to sell, give away, distribute, transmit, or display] **child pornography. The Commonwealth must prove beyond a reasonable doubt that the defendant knowingly** [distributed; reproduced by any means, including by computer; sold; gave away; displayed; transmitted electronically; purchased; or, possessed with the intent to sell, give away, distribute, transmit, or display] **child pornography.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the above element of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt the above element of the crime, then you shall find the defendant not guilty.

Instruction No. 29.420(a)(2) Distribution, etc., of Child Pornography—Second or Subsequent Violation

The defendant is charged with the crime of second or subsequent violation of [distributing; reproducing; selling; giving away; displaying; electronically transmitting; purchasing; or possessing with the intent to sell, give away, distribute, transmit, or display] child pornography. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) that the defendant knowingly** [distributed; reproduced by any means, including by computer; sold; gave away; displayed; transmitted electronically; purchased; or, possessed with the intent to sell, give away, distribute, transmit, or display] **child pornography; and**
- (2) that it is the defendant's second or subsequent violation of knowingly** [distributing; reproducing; selling; giving away; displaying; electronically transmitting; purchasing; possessing with the intent to sell, give away, distribute, transmit, or display] **child pornography; or** [commanding; entreating; or otherwise attempting to persuade] **another person to** [send; submit; transfer; or provide to him] **child pornography in order to gain entry into** [a group; an association; or an assembly of persons engaged in trading or sharing child pornography].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.420(a) Distribution, etc., of Child Pornography

You have found the defendant guilty of the crime of [distributing; reproducing; selling; giving away; displaying; electronically transmitting; purchasing; or possessing with the intent to sell, give away, distribute, transmit, or display] child pornography[, second or subsequent violation].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years.

Instruction No. 29.420(b)(1) Commanding, Entreating or Otherwise Attempting to Persuade Another to Send, etc., Child Pornography in Order to Gain Entry Into a Group, etc.

The defendant is charged with the crime of [commanding; entreating; or otherwise attempting to persuade] another person to [send; submit; transfer; or provide to him] child pornography in order to gain entry into [a group; an association; or an assembly of persons] engaged in trading or sharing child pornography. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) that the defendant knowingly [commanded; entreated; or otherwise attempted to persuade] another person;**
- (2) to [send; submit; transfer; or provide] to him any child pornography; and**
- (3) that the defendant did so in order to gain entry into [a group; an association; or an assembly of persons] engaged in trading or sharing child pornography.**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. 29.420(b)(2) Commanding, Entreating or Otherwise Attempting to Persuade Another to Send, etc., Child Pornography in Order to Gain Entry Into a Group, etc.—Second or Subsequent Violation

The defendant is charged with the crime of second or subsequent violation of [commanding; entreating; or otherwise attempting to persuade] another person to [send; submit; transfer; or provide to him] child pornography in order to gain entry into [a group; an association; or an assembly of persons] engaged in trading or sharing child pornography. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) that the defendant knowingly [commanded; entreated; or otherwise attempted to persuade] another person;**
- (2) to [send; submit; transfer or provide] to him any child pornography; and**
- (3) that the defendant did so in order to gain entry into [a group; an association; or an assembly of persons] engaged in trading or sharing child pornography; and**
- (4) that it is the defendant's second or subsequent violation of knowingly [distributing; reproducing; selling; giving away; displaying; electronically transmitting; purchasing; possessing with the intent to sell, give away, distribute, transmit, or display] child pornography; or [commanding; entreating; or otherwise attempting to persuade] another person to [send; submit; transfer; or provide to him] child pornography in order to gain entry into [a group; an association; or an assembly of persons engaged in trading or sharing child pornography].**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.420(b) Commanding, Entreating or Otherwise Attempting to Persuade Another to Send, etc., Child Pornography in Order to Gain Entry Into a Group, etc.

You have found the defendant guilty of the crime of [commanding; entreating; or otherwise attempting to persuade] another person to [send; submit; transfer; or provide to him] child pornography in order to gain entry into [a group; an association; or an assembly of persons] engaged in trading or sharing child pornography[, second or subsequent violation].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years.

Instruction No. 29.420(c) Operating an Internet Website for the Purpose of Facilitating the Payment for Access to Child Pornography

The defendant is charged with the crime of operating an Internet website for the purpose of facilitating the payment for access to child pornography. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) that the defendant intentionally operated an Internet website;**
- (2) for the purpose of facilitating the payment for access to child pornography.**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.420(c) Operating an Internet Website for the Purpose of Facilitating the Payment for Access to Child Pornography

You have found the defendant guilty of the crime of Operating an Internet Website for the Purpose of Facilitating the Payment for Access to Child Pornography.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 29.430 Definition of Child Pornography

Child pornography means sexually explicit visual material which utilizes, or has as a subject, an identifiable minor.

An identifiable minor is a person [who was a minor at the time the visual depiction was created, adapted, or modified; whose image as a minor was used in creating, adapting or modifying the visual depiction]; **and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.**

The Commonwealth is not required to prove the actual identity of the minor.

Instruction No. 29.440 Definition of Sexually Explicit Visual Material

Sexually explicit visual material means a [picture; photograph; undeveloped photograph; drawing; book; magazine; pamphlet; sculpture; motion picture film; digital image, including such material stored in a computer's temporary Internet cache when three or more images or streaming videos are present] **which depicts** [sexual bestiality; a lewd exhibition of nudity; sexual excitement; sexual conduct; sadomasochistic abuse].

Instruction No. 29.445 Definition of Nudity

Nudity means a state of undress [exposing the human male or female genitals, pubic area or buttocks with less than a full opaque covering; showing the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; depicting covered or uncovered male genitals in a discernibly turgid state].

Instruction No. 29.446 Definition of Sexual Conduct

Sexual conduct means [actual or explicitly simulated acts of (masturbation, homosexuality, sexual intercourse); physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed (genitals, pubic area, buttocks, or female breast)].

Instruction No. 29.447 Definition of Sexual Excitement

Sexual excitement means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

Instruction No. 29.448 Definition of Sadomasochistic Abuse

Sadomasochistic abuse means actual or explicitly simulated flagellation or torture by or upon a person who is [nude or clad in undergarments, a mask, or bizarre costume; fettered, bound or otherwise physically restrained by a person who is nude, or clad in undergarments, a mask, or bizarre costume].

Instruction No. 29.450 Use of Computer, etc. For Purposes of Solicitation of Minor

The defendant is charged with the crime of using a [computer; computer network; (name of other communications system or electronic means)] for the purpose of soliciting, with lascivious intent, a person he knew, or had reason to believe, was less than 15 years of age for (name of relevant activity). The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant used a [computer; computer network; (name of other communications system or electronic means)] for the purposes of soliciting, with lascivious intent, (name of child) to engage in (name of activity); and**
- (2) That the defendant was 18 years of age or older at the time; and**
- (3) That the defendant knew, or had reason to believe, that (name of child) was less than 15 years of age at the time.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.450 Use of Computer, etc. For Purposes of Solicitation of Minor

You have found the defendant guilty of the crime of using a [computer; computer network; (name of other communications system or electronic means)] for the purposes of soliciting, with lascivious intent, a person he knew, or had reason to believe, was less than 15 years of age for (name of activity).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 29.500 Contributing to Delinquency of Minor

The defendant is charged with the crime of contributing to the delinquency of a minor. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant willfully** [contributed to; encouraged; caused] [an act; an omission; a condition] **which rendered** (name of child) [delinquent; in need of services; in need of supervision; abused; neglected]; **and**
- (2) That the defendant was 18 years old or older at the time; and**
- (3) That** (name of child) **was under 18 years old at the time.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P29.500 Contributing to Delinquency of Minor

You have found the defendant guilty of the crime of contributing to delinquency of a minor.

Upon consideration of all the evidence you have heard, you shall fix punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 30.100 Forgery—General

The defendant is charged with the crime of forgery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant, with intent to defraud, [falsely made; materially altered] (describe writing);**
- (2) Without authority to do so; and**
- (3) To the prejudice of another's right.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P30.100 Forgery—General

You have found the defendant guilty of the crime of forgery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 30.200 Falsely Obtaining Signature

The defendant is charged with the crime of forgery by false pretense. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant obtained the signature of (name person) to a (describe kind of writing);**
- (2) By false representation;**
- (3) With intent to defraud.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P30.200 Falsely Obtaining Signature

You have found the defendant guilty of the crime of forgery by false pretense.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 30.300 Uttering

The defendant is charged with the crime of uttering a forged writing. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant did, directly or indirectly, attempt to use a forged (describe writing);
- (2) Asserted by word or act that the forged (describe writing) was good and valid or true;
- (3) With intent to defraud;
- (4) Knowing the writing was forged.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix his punishment until the verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P30.300 Uttering

You have found the defendant guilty of the crime of uttering a forged writing.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 30.400 Possession of Forged Writing

Possession of a forged writing by the defendant who tries to use it to obtain money thereon creates an inference that the defendant forged the writing, unless upon consideration of all the evidence you have a reasonable doubt that the defendant forged the writing.

OR

You may infer that the defendant forged (describe writing) if the defendant possessed the forged (describe writing) and attempted to obtain money with it, unless upon consideration of all the evidence you have a reasonable doubt that the defendant forged the (describe writing).

Instruction No. 30.500 Presumption of Authority to Make Writing for Another

In the absence of other evidence to the contrary, one who makes and signs a writing for another is presumed to have authority to do so.

Instruction No. 30.600 Forging Public Record

The defendant is charged with the crime of [forging a public record; forging a certificate, return, or attestation of a public officer or public employee]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [falsely made; materially altered] a [public record; certificate, return, or attestation of a public officer or public employee in relation to a matter where such public record, certificate, return, or attestation may be received as legal proof];

(2) With the intent to defraud.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P30.600 Forging Public Record

You have found the defendant guilty of the crime of [forging a public record; forging a certificate, return, or attestation of a public officer or public employee].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
or
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 30.610 Public Record— Definition

A public record is any recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. The determination of whether recorded information is a public record does not depend on its physical form or characteristic, or on the medium upon which such information is recorded. The recorded information constitutes a public record if it is (1) produced, (2) collected, (3) received, or (4) retained in pursuance of law or in connection with the transaction of public business.

Instruction No. 30.620 Uttering Forged Public Record

The defendant is charged with the crime of [uttering a forged public record; uttering a certificate, return, or attestation of a public officer or public employee]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant did, directly or indirectly, attempt to use a forged [public record; certificate, return, or attestation of a public officer or public employee in relation to a matter where such public record, certificate, return, or attestation may be received as legal proof];**
- (2) Asserted by word or act that the forged [public record; certificate, return, or attestation of a public officer or public employee in relation to a matter where such public record may be received as legal proof] was good and valid or true;**
- (3) With intent to defraud;**
- (4) Knowing the [public record; certificate, return or attestation of a public officer or public employee in relation to a matter where such public record may be received as legal proof] was forged.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix his punishment until the verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P30.620 Uttering Forged Public Record

You have found the defendant guilty of the crime of uttering a forged public record.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 30.700 Forgery Equipment

The defendant is charged with the crime of making or having something designed for forging a writing or some other thing. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [engraved; stamped; cast; made or mended; possessed] a [plate; block; press; thing] adapted and designed for the forging and false making of a (describe writing or other thing); and
- (2) That the defendant intended [to use; to cause or permit to be used] such [plate; block; press; thing] in forging or false making of (describe writing or other thing).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P30.700 Forgery Equipment

You have found the defendant guilty of the crime of making or having something designed for forging a writing or some other thing.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 32.100 Hit and Run—Death, Personal Injury or Damage to Attended Property—Felony

The defendant is charged with the crime of leaving the scene of an accident causing [personal injury; death; damage to attended property] [to; of] another. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was the driver of a vehicle which he knew was involved in an accident; and**
- (2) That the accident caused [personal injury; death; damage to an attended vehicle or other attended property of more than \$1000] [to; of] another; and**
- (3) That the defendant knew, or should have known, [that another person was injured by the accident; that another person was killed in the accident; that an attended vehicle or other attended property was damaged by the accident]; and**
- (4) That the defendant failed to do any of the following:**
 - (a) stop immediately as close to the scene of the accident as possible without obstructing traffic;**
or
 - (b) render reasonable assistance to any person injured in the accident; or**
 - (c) report his name, address, driver's license number and vehicle registration number forthwith to the State Police or local law enforcement agency or to the person struck and injured if such person appeared to be capable of understanding and retaining the information, or to the driver or some other occupant of the vehicle collided with or the custodian of other damaged property.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P32.100 Hit and Run—Death, Personal Injury or Damage to Attended Property—Felony

You have found the defendant guilty of the crime of leaving the scene of an accident causing [personal injury; death; damage to attended property] to another.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 32.200 Hit and Run—Damage of \$1000 or Less to Property—Misdemeanor

The defendant is charged with the crime of leaving the scene of an accident causing damage to attended property. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was the driver of a vehicle which he knew was involved in an accident; and
- (2) That the accident caused damage to an attended vehicle or other attended property of \$1000 or less; and
- (3) That the defendant knew, or should have known, that an attended vehicle or other attended property was damaged by the accident; and
- (4) That the defendant failed to do any of the following:
 - (a) stop immediately as close to the scene of the accident as possible without obstructing traffic; or
 - (b) report his name, address, driver's license number and vehicle registration number forthwith to the State Police or local law enforcement agency, or to the driver or some other occupant of the vehicle collided with or the custodian of other damaged property.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P32.200 Hit and Run—Damage of \$1000 or Less to Property—Misdemeanor

You have found the defendant guilty of the crime of leaving the scene of an accident causing damage to attended property.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 32.300 Involved in an Accident —Definition

The driver of a vehicle has been involved in an accident if:

- (a) There has been physical contact between the driver's vehicle and another vehicle, person or object; or**
- (b) The driver of the vehicle was a proximate cause of the accident**

Instruction No. 33.100 Aggravated Murder

The defendant is charged with the crime of aggravated murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant killed** [(name of person; names of persons)]; **and**
(2) That the [killing was; killings were] **willful, deliberate and premeditated; and**
(3) That the killing [occurred in the commission of [robbery; attempted robbery]; occurred in the commission of abduction with the intent to extort money, or a pecuniary benefit, or with the intent to defile the victim of such an abduction; was for hire; was committed while defendant was confined in a [state; local] correctional facility; was committed while defendant was in the custody of an employee of a [state; local] correctional facility; was of a person in the commission of, or subsequent to, [rape; attempted rape; forcible sodomy; attempted forcible sodomy; object sexual penetration]; was of a law-enforcement officer and for the purpose of interfering with the performance of his official duties; occurred in the [commission; attempted commission] of (specify violation of Va. Code Ann. § 18.2-248) and for the purpose of furthering the [commission; attempted commission] of that violation; was pursuant to the direction or order of one then engaged in a continuing criminal enterprise; was of a pregnant woman by one who knew that the woman was pregnant and had the intent to cause the involuntary termination of the pregnancy without a live birth; was of a person under the age of fourteen by a person age twenty-one or older; was of more than one person as a part of the same act or transaction; was the willful, deliberate and premeditated killing of more than one person within a three-year period; was in the commission of or the attempted commission of an act of terrorism; was of a justice of the Supreme Court, a judge of the Court of Appeals, a judge of a circuit court or district court, a retired judge sitting by designation or under temporary recall, or a substitute judge appointed under Va. Code Ann. § 16.1-69.9:1 when the killing was for the purpose of interfering with his official duties as a judge; was of a witness in a criminal case after a subpoena had been issued for such witness by the court, the clerk, or an attorney when the killing was for the purpose of interfering with the person's duties in such case.]
[(3) That the killings occurred as a part of the same act or transaction.]
[(3) That the killings occurred within a three-year period.]

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [and shall not fix the punishment until your verdict has been returned and further evidence is heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty of aggravated murder.

Instruction No. P33.126 Aggravated Murder— Ineligibility for Parole

The words “imprisonment for life” mean imprisonment for life without possibility of parole.

Instruction No. P33.130 Aggravated Murder

You have found the defendant guilty of the crime of aggravated murder.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Imprisonment for life; or**
- (2) Imprisonment for life and a fine of a specific amount but not more than \$100,000.00.**

Instruction No. 33.200(a) First Degree Murder

The defendant is charged with the crime of first degree murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant killed** (name of person); **and**
- (2) That the killing was malicious; and**
- (3) That the killing** [was willful, deliberate and premeditated; occurred by poison; occurred by lying in wait; occurred by imprisonment; occurred by starving].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty of first degree murder.

Instruction No. 33.200(b) First Degree Felony Murder

The defendant is charged with the crime of first degree murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant killed (name of person); and**
- (2) That the killing [occurred in the commission of, or attempt to commit, rape, arson, forcible sodomy, inanimate or animate object sexual penetration, robbery, burglary or abduction] as that crime is separately defined.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty of first degree murder.

Instruction No. P33.200 First Degree Murder

You have found the defendant guilty of the crime of first degree murder.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Imprisonment for life; or**
- (2) Imprisonment for life and a fine of a specific amount, but not more than \$100,000; or**
- (3) A specific term of imprisonment, but not less than twenty (20) years; or**
- (4) A specific term of imprisonment, but not less than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 33.205 “In the Commission of”—Definition for Aggravated Murder and First Degree Felony Murder

You are instructed that a killing is in the commission of (the predicate offense) if it is so related in time, place and causal connection as to make it part of the same criminal undertaking or enterprise. This can occur before, during or after the (predicate offense).

Instruction No. 33.220 Malice—Definition

Malice is that state of mind which results in the intentional doing of a wrongful act to another without legal excuse or justification, at a time when the mind of the actor is under the control of reason. Malice may result from any unlawful or unjustifiable motive including anger, hatred or revenge. You may, but are not required to, infer malice from any deliberate, willful, and cruel act against another, however sudden.

Heat of passion excludes malice when that heat of passion arises from provocation that reasonably produces an emotional state of mind such as hot blood, rage, anger, resentment, terror or fear so as to demonstrate an absence of deliberate design to kill, or to cause one to act on impulse without conscious reflection. Heat of passion must be determined from circumstances as they appeared to the defendant but those circumstances must be such as would have aroused heat of passion in a reasonable person.

If a person acts upon reflection or deliberation, or after his passion has cooled or there has been a reasonable time or opportunity for cooling, then the act is not attributable to heat of passion.

Instruction No. 33.230 Malice—Murder and Manslaughter Distinguished

The difference between murder and manslaughter is malice. When malice is present, the killing is murder. When it is absent, the killing can be no more than manslaughter.

Instruction No. 33.240 Malice—Inference From Use of Deadly Weapon

You may, but are not required, to infer malice from the deliberate use of a deadly weapon unless, from all the evidence, you have a reasonable doubt as to whether malice existed.

A deadly weapon is any object or instrument, not part of the human body, that is likely to cause death or great bodily injury because of the manner and under the circumstances in which it is used.

Instruction No. 33.260 Willful, Deliberate, and Premeditated

“Willful, deliberate, and premeditated” means a specific intent to kill, adopted at some time before the killing, but which need not exist for any particular length of time.

Instruction No. 33.300 Inference of Second Degree Murder

Once the Commonwealth has proved there was an unlawful killing, then you may, but are not required, to infer that there was malice and that the act was murder in the second degree unless, from all the evidence, you have a reasonable doubt as to whether malice existed.

Instruction No. 33.320 Second Degree Murder

The defendant is charged with the crime of second degree murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant killed (name of person); and**
- (2) That the killing was done with malice.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until the verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty of second degree murder.

Instruction No. P33.320 Second Degree Murder

You have found the defendant guilty of the crime of second degree murder.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than forty (40) years.

Instruction No. 33.340 Second Degree Felony Homicide

The defendant is charged with the crime of felony homicide. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant killed (name of person); and**
- (2) That the killing was accidental and contrary to the intention of the defendant;**
- (3) That the killing was caused by acts performed in the commission of (name of felony) as that crime is separately defined; and**
- (4) That the killing and (name of felony) were parts of one continuous transaction and were closely related in time and place.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until the verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty of felony homicide.

Instruction No. P33.340 Second Degree Felony Homicide

You have found the defendant guilty of the crime of felony homicide.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than forty (40) years.

Instruction No. 33.345 “In the Commission of”—Definition for Second Degree Felony Homicide

To be in the commission of (name of felony) **requires that the killing result** [from an act that was an integral part of the (name of felony); an act in direct furtherance of the (name of felony); an act necessitated by the (name of felony)].

Instruction No. 33.400 Motive

To prove the charge of murder the Commonwealth does not have to prove a motive for the killing. The presence or absence of a motive may be considered in arriving at your verdict.

Instruction No. 33.500 Voluntary Manslaughter

The defendant is charged with the crime of voluntary manslaughter. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant killed** (name of person); **and**
- (2) That the killing was the result of an intentional act; and**
- (3) That the killing was committed while** [in the sudden heat of passion upon reasonable provocation; in mutual combat].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P33.500 Voluntary Manslaughter

You have found the defendant guilty of the crime of voluntary manslaughter.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 33.550 Words as Provocation

Words alone, no matter how offensive or insulting they may be, are never sufficient provocation to reduce the offense of murder to manslaughter.

Instruction No. 33.600 Involuntary Manslaughter—General

The defendant is charged with the crime of involuntary manslaughter. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant killed (name of person); **and**

(2) That the killing, although unintended, was the direct result of [negligence; the unlawful performance of a lawful act, accompanied by carelessness; the performance of an unlawful, but not felonious, act, accompanied by carelessness] **so gross, wanton and culpable as to show a callous disregard of human life.**

[(1) That the defendant owed (name of person) a legal duty; and

(2) That the death of (name of person) was the direct result of the defendant's failure to perform the legal duty owed to (name of person); and

(3) That the defendant's failure to perform the duty constituted negligence so gross, wanton and culpable as to show a callous disregard for human life.]

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P33.600 Involuntary Manslaughter—General

You have found the defendant guilty of the crime of involuntary manslaughter.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
 - (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
 - (3) A fine of a specific amount, but not more than \$2,500; or**
 - (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**
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Instruction No. 33.610 Involuntary Manslaughter—Criminal Negligence— Definition

The gist of involuntary manslaughter is criminal negligence. It must be shown that the negligence of the defendant was gross or culpable negligence. Gross or culpable negligence is that which indicates a callous disregard of human life and of the probable consequences of his act. Criminal liability cannot be predicated upon every act carelessly performed merely because such carelessness results in the death of another. In order for criminal liability to result from negligence, it must necessarily be reckless or wanton and of such a character as to show disregard of the safety of others under circumstances likely to cause injury or death. Unless you believe from the evidence beyond a reasonable doubt that the defendant was guilty of negligence so culpable or gross as to indicate a callous disregard of human life and of the probable consequences of his act, you cannot find him guilty of involuntary manslaughter.

Instruction No. 33.650 Involuntary Manslaughter, Motor Vehicle—Under the Influence

The defendant is charged with the crime of involuntary manslaughter. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was [driving; operating] a motor vehicle; and**
- (2) That at the time he was [under the influence of alcohol; under the influence of a narcotic drug or a self-administered intoxicant or drug of whatsoever nature; under the influence of a combination of drugs; under the combined influence of alcohol and a drug or drugs] to a degree which impaired his ability to [drive; operate] a motor vehicle safely; and**
- (3) That as a result of driving under the influence the defendant unintentionally caused the death of (name of person).**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P33.650 Involuntary Manslaughter, Motor Vehicle—Under the Influence

You have found the defendant guilty of the crime of involuntary manslaughter.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 33.660 Aggravated Involuntary Manslaughter, Motor Vehicle—Under the Influence

The defendant is charged with the crime of aggravated involuntary manslaughter. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was [driving; operating] a motor vehicle; and**
- (2) That at the time he was [under the influence of alcohol; under the influence of a narcotic drug or a self-administered intoxicant or drug of whatsoever nature; under the influence of a combination of drugs; under the combined influence of alcohol and a drug or drugs] to a degree which impaired his ability to [drive; operate] a motor vehicle safely; and**
- (3) That as a result of driving under the influence the defendant unintentionally caused the death of (name of person); and**
- (4) That the defendant's conduct was so gross, wanton and culpable as to show a reckless disregard for human life.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of aggravated involuntary manslaughter [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty of aggravated involuntary manslaughter.

Instruction No. P33.660 Aggravated Involuntary Manslaughter, Motor Vehicle—Under the Influence

You have found the defendant guilty of the crime of aggravated involuntary manslaughter.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years.

Instruction No. 33.700 Lesser Included Offenses

The defendant is charged with the crime of first degree murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant killed (name of person); and**
- (2) That the killing was malicious; and**
- (3) That the killing was willful, deliberate and premeditated.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of first degree murder [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged but you do not find beyond a reasonable doubt that the killing was willful, deliberate and premeditated, then you shall find the defendant guilty of second degree murder [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the killing was malicious but that the Commonwealth has proved beyond a reasonable doubt that the defendant killed (name of person) and further:

- (1) That the killing was the result of an intentional act; and**
- (2) That the killing was committed while [in the sudden heat of passion upon reasonable provocation; in mutual combat];**

then you shall find the defendant guilty of voluntary manslaughter [but you shall not fix the punishment until the verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any of the above offenses, then you shall find the defendant not guilty.

Instruction No. P33.700(a) Lesser Included Offenses—First Degree Murder

You have found the defendant guilty of the crime of first degree murder.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Imprisonment for life; or**
- (2) Imprisonment for life and a fine of a specific amount, but not more than \$100,000; or**
- (3) A specific term of imprisonment, but not less than twenty (20) years; or**
- (4) A specific term of imprisonment, but not less than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P33.700(b) Lesser Included Offenses—Second Degree Murder

You have found the defendant guilty of the crime of second degree murder.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than forty (40) years.

Instruction No. P33.700(c) Lesser Included Offenses—Voluntary Manslaughter

You have found the defendant guilty of the crime of voluntary manslaughter.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 33.720 Doubt as to Grade of Offense

You have been instructed on more than one grade of homicide. If you have a reasonable doubt as to the grade of the offense, then you must resolve that doubt in favor of the defendant and find him guilty of the lesser offense.

For example, if you have a reasonable doubt as to whether he is guilty of aggravated murder or first degree murder, you shall find him guilty of first degree murder. If you have a reasonable doubt as to whether he is guilty of first degree murder or second degree murder, you shall find him guilty of second degree murder. If you have a reasonable doubt as to whether he is guilty of second degree murder or voluntary manslaughter, you shall find him guilty of voluntary manslaughter. If you have a reasonable doubt as to whether he is guilty of voluntary manslaughter or involuntary manslaughter, you shall find him guilty of involuntary manslaughter. If you have a reasonable doubt as to whether he is guilty at all, you shall find him not guilty.

Instruction No. 33.800 Self-Defense—Defendant Without Fault

If you believe that the defendant was without fault in provoking or bringing on the [fight; difficulty], and you further believe that:

- (1) he reasonably feared, under the circumstances as they appeared to him, that he was in imminent danger of being killed or that he was in imminent danger of great bodily harm; and**
- (2) he used no more force, under the circumstances as they appeared to him, than was reasonably necessary to protect himself from the perceived harm,**

then the killing was in self-defense, and you shall find the defendant not guilty.

Instruction No. 33.810 Self-Defense—Defendant With Fault—Retreat to Wall

If you believe that the defendant was to some degree at fault in provoking or bringing on the [fight; difficulty], but you further believe that:

- (1) he retreated as far as he safely could under the circumstances in a good faith attempt to abandon the fight; and**
- (2) he made known his desire for peace by word or act; and**
- (3) he reasonably feared, under the circumstances as they appeared to him, that he was in imminent danger of being killed or that he was in imminent danger of great bodily harm; and**
- (4) he used no more force, under the circumstances as they appeared to him, than was reasonably necessary to protect himself from the perceived harm,**

then the killing was in self-defense, and you shall find the defendant not guilty.

Instruction No. 33.850 Accidental Killing

Where the defense is that the killing was an accident, the defendant is not required to prove this fact. The burden is on the Commonwealth to prove beyond a reasonable doubt that the killing was not accidental. If, after considering all the evidence, you have a reasonable doubt whether the killing was accidental or intentional, then you shall find the defendant not guilty.

Instruction No. 33.900 Transferred Intent— General

If you believe beyond a reasonable doubt that the defendant intended [to kill; to wound] (name of person) but that he [killed; wounded] (name of victim) by mistake, then that intent is transferred to the [killing; wounding] of (name of victim).

Instruction No. 33.910 Transferred Intent— Self-Defense

If you believe that the defendant was acting in self-defense as to the actions of (name of person defended against) at the time he [killed; wounded] (name of victim) accidentally, then you shall find him not guilty.

Instruction No. 33.950 Intent—Intoxication Defense

If you find that the defendant was so greatly intoxicated by the voluntary use of [alcohol; drugs] that he was incapable of deliberating or premeditating, then you cannot find him guilty of [aggravated murder; murder in the first degree].

Voluntary intoxication is not a defense to (specify lesser degree of homicide).

Instruction No. 34.100 Illegal Gambling— General

The defendant is charged with the crime of illegal gambling. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant made, placed, or received in the Commonwealth of Virginia a bet or wager of money or other thing of value; and**
- (2) The bet or wager was in exchange for a chance to win money or other thing of value and depended on the result of a game, contest, or any event the outcome of which is uncertain or a matter of chance.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty [and fix his punishment at a fine of a specific amount, but not more than \$500].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the offense, then you shall find the defendant not guilty.

Instruction No. 34.200 Operating Illegal Gambling Enterprise

The defendant is charged with the crime of operating an illegal gambling enterprise, activity or operation. The Commonwealth must prove beyond a reasonable doubt that the defendant was the operator of an illegal gambling enterprise.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove the offense beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P34.200 Operating Illegal Gambling Enterprise

You have found the defendant guilty of the crime of operating an illegal gambling enterprise, activity or operation.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 34.220 Operating Illegal Gambling Enterprise for More Than Thirty Days or With Daily Gross Revenue of \$2,000 or More

The defendant is charged with the crime of operating an illegal gambling enterprise, activity or operation [continuously for a period of time in excess of thirty (30) days; having a gross revenue of \$2,000 or more in a single day]. **The Commonwealth must prove beyond a reasonable doubt that the defendant was the operator of an illegal gambling enterprise** [continuously for a period of time in excess of thirty (30) days; having a gross revenue of \$2,000 or more in a single day].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove the offense beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P34.220 Operating Illegal Gambling Enterprise for More Than Thirty Days or With Daily Gross Revenue of \$2,000 or More

You have found the defendant guilty of the crime of operating an illegal gambling enterprise, activity or operation [continuously for a period of time in excess of thirty (30) days; having a gross revenue of \$2,000 or more in a single day].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than one (1) year nor more than ten (10) years, and a fine of a specific amount, but not more than \$20,000.

Instruction No. 34.230 Definition of Illegal Gambling

“Illegal gambling” means the making, placing or receipt, of any bet or wager in this Commonwealth of money or other thing of value, made in exchange for a chance to win a prize, stake or other consideration or thing of value, dependent upon the result of any game, contest or any other event the outcome of which is uncertain or a matter of chance, whether such game, contest or event occurs or is to occur inside or outside the limits of this Commonwealth.

Instruction No. 34.240 Definition of Operator

The term “Operator” includes any person, firm or association of persons, who conducts, finances, manages, supervises, directs or owns all or part of an illegal gambling enterprise, activity or operation.

An “operator” of an illegal gambling enterprise is one who leads and controls the enterprise as distinguished from one who merely engages or participates in it.

Instruction No. 34.250 Definition of Gross Revenue

The term “gross revenue” means the total amount of illegal gambling transactions handled, dealt with, received by, or placed with such operation, as distinguished from any net figure or amount from which deductions are taken, without regard to whether money or any other thing of value actually changes hands.

Instruction No. 34.300 Accessory to Gambling Activity

The defendant is charged with the crime of being an accessory to gambling activity. The Commonwealth must prove beyond a reasonable doubt that the defendant did knowingly aid, abet or assist in the operation of an illegal gambling enterprise, activity or operation.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the offense as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove the offense beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P34.300 Accessory to Gambling Activity

You have found the defendant guilty of being an accessory to gambling activity.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 35.100 Obstructing Justice (Law Enforcement Officer)

The defendant is charged with the crime of obstructing justice. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant by [threats; force]**
- (2) Knowingly attempted to [intimidate; impede] a law enforcement officer**
- (3) While the law enforcement officer was lawfully engaged in duties as a law enforcement officer.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P35.100 Obstructing Justice (Law Enforcement Officer)

You have found the defendant guilty of the crime of obstructing a law enforcement officer.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 35.200 Arrest—Definition

An arrest occurs when an officer physically restrains an individual or when the individual submits to the authority of the officer.

Instruction No. 35.220 Lawful Discharge of Duty in Making Arrest—Definition

The lawful discharge of duty in making an arrest requires (1) that the officer making the arrest has the authority to do so and (2) that the conduct of the officer in making the arrest is lawful.

An officer has the authority to make an arrest [when he has in his possession a warrant for the arrest of the person he is seeking to arrest; when he has reasonable grounds or probable cause to believe that the person he is seeking to arrest has committed, or been charged with, a felony; when he observes a crime being committed in his presence by the person he is seeking to arrest; when there is probable cause based upon a reasonable complaint of a person who has observed a misdemeanor involving shoplifting, even though the offense was not committed in the officer's presence; when there is probable cause based upon a reasonable complaint of a person who has observed a misdemeanor involving carrying a weapon on school property, property open to the public which is being used for a school sponsored function, or a school bus, even though the offense was not committed in the officer's presence].

An officer having the authority to make an arrest must be in uniform or must display his badge to the person he is seeking to arrest. The officer may use whatever force is reasonably necessary to arrest a person. He is not required to inform the person of the charges against him until that person has been arrested.

Instruction No. 35.300 Obstructing Administration of Justice—Felony

The defendant is charged with the crime of attempting to obstruct the administration of justice. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant knowingly attempted to [obstruct; impede] the administration of justice in (name of court); and**
- (2) That the defendant did so by [threat of bodily harm; force]; and**
- (3) That at the time of the defendant's obstruction, the [judge; magistrate; justice; juror; witness; attorney for the Commonwealth or law enforcement officer] was engaged in the discharge of a duty that related to [a violation of (statute listed in Va. Code Ann. § 18.2-460(C)); a conspiracy to violate (statute listed in Va. Code Ann. § 18.2-460(C))].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P35.300 Obstructing Administration of Justice—Felony

You have found the defendant guilty of the crime of attempting to obstruct the administration of justice.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 35.400 Giving False Reports to Law Enforcement Officials

The defendant is charged with the crime of giving a false report to a law enforcement official. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant gave a false report to a law enforcement official; and**
- (2) That the report was about the commission of a crime; and**
- (3) That the defendant knew the report was false; and**
- (4) That the defendant intended to mislead the law enforcement official.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P35.400 Giving False Reports to Law Enforcement Officials

You have found the defendant guilty of the crime of giving a false report to a law enforcement official.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 35.450 Calling or Summoning Emergency Medical Services Vehicle or Firefighting Apparatus Without Just Cause

The defendant is charged with the crime of [calling; summoning] [an emergency medical services vehicle; firefighting apparatus] without just cause. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

(1) That the defendant [called; summoned] [an emergency medical services vehicle; firefighting apparatus]; and

(2) That the defendant did not have just cause for [calling; summoning] such [emergency medical services vehicle; firefighting apparatus].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P35.450 Calling or Summoning Emergency Medical Services Vehicle or Firefighting Apparatus Without Just Cause

You have found the defendant guilty of the crime of [calling; summoning] [an emergency medical services vehicle; firefighting apparatus] without just cause.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 35.500 Emergency Personnel— Definition

Emergency personnel” means any persons, paid or volunteer, who receives calls for dispatch of police, fire, or emergency services personnel, and includes law-enforcement officers, firefighters, including special forest wardens designated pursuant to § 10.1-1135, and emergency medical services personnel.

Instruction No. 35.510 Emergency Response— Definition

An emergency response occurs when a firefighter, law enforcement officer, or emergency medical services personnel responds to a situation where human life, health, or property is in jeopardy and the prompt provision of aid is essential to protect human life, health, or property.

Instruction No. 35.520 Making False Emergency Communication to Emergency Personnel

The defendant is charged with the crime of giving a false emergency report to emergency personnel that resulted in an emergency response. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [knowingly reported an emergency; caused someone else, in reliance upon the defendant's information, to report an emergency]; and**
- (2) That the defendant knew the report was false; and**
- (3) That the report was communicated to emergency personnel; and**
- (4) That the report resulted in an emergency response.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P35.520 Making False Emergency Communication to Emergency Personnel

You have found the defendant guilty of the crime of giving a false emergency report to emergency personnel that resulted in an emergency response.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 35.530 Making False Emergency Communication to Emergency Personnel That Results in Serious Bodily Injury

The defendant is charged with the crime of giving a false emergency report to emergency personnel that resulted in serious bodily injury. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [knowingly reported an emergency; caused someone else, in reliance upon the defendant's information, to report an emergency]; **and**
- (2) That the defendant knew the report was false; and**
- (3) That the report was communicated to emergency personnel; and**
- (4) That the report resulted in an emergency response; and**
- (5) That the report resulted in serious bodily injury.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt elements 1–4 but not element 5, then you shall find the defendant guilty of making a false emergency communication to emergency personnel (but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you).

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of elements 1–4 of the crime, then you shall find the defendant not guilty.

Instruction No. P35.530 Making False Emergency Communication to Emergency Personnel That Results in Serious Bodily Injury

You have found the defendant guilty of the crime of giving a false emergency report to emergency personnel that resulted in serious bodily injury.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 35.540 Making False Emergency Communication to Emergency Personnel That Results in a Death

The defendant is charged with the crime of giving a false emergency report to emergency personnel that resulted in a death. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant knowingly reported an emergency [caused someone else, in reliance upon the defendant's information, to report an emergency]; and**
- (2) That the defendant knew the report was false; and**
- (3) That the report was communicated to emergency personnel; and**
- (4) That the report resulted in an emergency response;**
- (5) That the report resulted in any person being killed.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt elements 1–4 but not element 5, then you shall find the defendant guilty of making a false emergency communication to emergency personnel (but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you).

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of elements 1–4 of the crime, then you shall find the defendant not guilty.

Instruction No. P35.540 Making False Emergency Communication to Emergency Personnel That Results in a Death

You have found the defendant guilty of the crime of giving a false emergency report to emergency personnel that resulted in a death.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 35.600 Failure to Appear

The defendant is charged with the crime of failure to appear in court. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was [charged with; convicted of] a [misdemeanor; felony]; and**
- (2) That the defendant was required to appear on (date) before (name of court); and**
- (3) That the defendant willfully failed to appear before (name of court).**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P35.600 Failure to Appear

You have found the defendant guilty of the crime of failure to appear in court.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 35.700 Obstruction—Resisting Execution of Legal Process

The defendant is charged with the crime of resisting or obstructing execution of legal process. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant resisted or obstructed the execution of legal process, namely (describe the kind of process resisted or obstructed); and**
- (2) That he did so by acting jointly or in combination with another person.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove the crime beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P35.700 Obstruction—Resisting Execution of Legal Process

You have found the defendant guilty of the crime of resisting the execution of legal process.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 35.800 Sex Offender—False Information, Failure to Register, Re-register, or Verify Registration Information—Felony

The defendant is charged with the crime of [failure to register, re-register, or verify registration information with the Sex Offender and Crimes Against Minors Registry; providing false information to the Sex Offender and Crimes Against Minors Registry]. **The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:**

- (1) That the defendant was convicted of** (name of sexually violent crime; murder where the victim is a minor); **and**
- (2) That the defendant knowingly** [failed to register, re-register, or verify registration information with the Sex Offender and Crimes Against Minors Registry; provided materially false information to the Sex Offender and Crimes Against Minors Registry].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you should find the defendant not guilty.

Instruction No. P35.800 Sex Offender—False Information, Failure to Register, Re-register, or Verify Registration Information—Felony

You have found the defendant guilty of the crime of [failure to register, re-register, or verify registration information with the Sex Offender and Crimes Against Minors Registry; providing false information to the Sex Offender and Crimes Against Minors Registry.]

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 35.900 Giving False Identity to Law Enforcement Officer

The defendant is charged with the crime of falsely identifying himself to a law enforcement officer. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That a law enforcement officer lawfully detained the defendant; and**
- (2) That the law enforcement officer requested the defendant to identify himself; and**
- (3) That the defendant falsely identified himself to the law enforcement officer; and**
- (4) That the defendant intended to deceive the law enforcement officer as to his real identity.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P35.900 Giving False Identity to Law Enforcement Officer

You have found the defendant guilty of the crime of giving false identity to a law enforcement officer.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment as:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 36.100 Grand Larceny— General

The defendant is charged with the crime of grand larceny. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant took (describe personal property) belonging to (name of person) and carried it away; and**
- (2) That the taking was against the will and without the consent of the owner; and**
- (3) That the taking was with the intent to steal; and**
- (4) That the property taken [was worth \$1000 or more; was a firearm].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of grand larceny [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first three elements of the crime as charged, but has not proved beyond a reasonable doubt that the property carried away was \$1000 or more, and if you find beyond a reasonable doubt that such property was of some value (there need be no proof of minimum or specific value), then you shall find the defendant guilty of petit larceny, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any of the first three elements of the crime or failed to prove the property carried away was of some value, then you shall find the defendant not guilty.

Instruction No. P36.100(a) Grand Larceny— General

You have found the defendant guilty of the crime of grand larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P36.100(b) Petit Larceny— Misdemeanor

You have found the defendant guilty of the crime of petit larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 36.120 Grand Larceny—From Person

The defendant is charged with the crime of grand larceny. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant took (describe personal property) from the person of (name of person) and carried it away; and**
- (2) That the taking was against the will and without the consent of the other person; and**
- (3) That the taking was with the intent to steal; and**
- (4) That the property was worth \$5 or more.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of grand larceny from the person, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first three elements of the crime as charged, but has not proved beyond a reasonable doubt that the property carried away was \$5 or more, and if you find beyond a reasonable doubt that such property was of some value (there need be no proof of minimum or specific value), then you shall find the defendant guilty of petit larceny, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any of the first three elements of the crime or failed to prove the property carried away was of some value, then you shall find the defendant not guilty.

Instruction No. P36.120(a) Grand Larceny— From Person—Felony

You have found the defendant guilty of the crime of grand larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P36.120(b) Petit Larceny— From Person—Misdemeanor

You have found the defendant guilty of the crime of petit larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 36.200 Petit Larceny—General

The defendant is charged with the crime of petit larceny. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant took (describe personal property) belonging to (name of person) and carried it away; and**
- (2) That the taking was against the will and without the consent of the owner; and**
- (3) That the taking was with the intent to steal; and**
- (4) That the property was of some value.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P36.200 Petit Larceny—General

You have found the defendant guilty of the crime of petit larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 36.300 Larceny—Possession Inference

If you believe from the evidence that (describe personal property) belonging to (name of person) was taken and carried away, that the taking was against the will and without the consent of the owner, and that the taking was with the intent to steal, then proof of the exclusive possession by the defendant of the recently stolen (describe property) is a circumstance from which you may reasonably infer that the defendant was the thief, unless, from all the evidence, you have a reasonable doubt as to whether the defendant was the thief.

You may not find from the possession of recently stolen goods alone that the defendant is guilty of larceny.

The term “recently” is a relative term. Drawing an inference of guilt from unexplained possession becomes less reasonable as more time elapses from the time of theft.

“Exclusive possession” must be actual knowing possession.

[“Exclusive possession” may be joint with another or others but it must be under circumstances which cause you to believe that the defendant has knowing joint possession. It is not shown when the property is found on premises owned or occupied by others as well as the defendant, or in a place where others had equal opportunity or right of access, unless there is a further showing of actual knowing possession.]

Instruction No. 36.400 Grand Larceny— Receiving Stolen Goods

The defendant is charged with the crime of grand larceny by receiving stolen goods. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the (describe goods) were previously stolen from (name person) by some other person; and**
- (2) That the defendant [bought or received them from another person; aided in concealing them] with dishonest intent; and**
- (3) That at the time of [receipt; aiding in concealing] the defendant knew they had been stolen; and**
- (4) That the value of the goods was \$1000 or more.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of grand larceny receiving stolen goods, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first three elements of the crime as charged, but has not proved beyond a reasonable doubt that the value of such property was \$1000 or more, and if you find beyond a reasonable doubt that such property was of some value (there need be no proof of minimum or specific value), then you shall find the defendant guilty of the crime of petit larceny, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any of the first three elements of the crime or failed to prove such property was of some value, then you shall find the defendant not guilty.

Instruction No. P36.400(a) Grand Larceny— Receiving Stolen Goods

You have found the defendant guilty of the crime of grand larceny by receiving stolen goods.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P36.400(b) Receiving Stolen Goods—Misdemeanor

You have found the defendant guilty of the crime of petit larceny by receiving stolen goods.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 36.410 Receiving Stolen Goods —Possession Inference

If you believe from the evidence that the (describe goods) were previously stolen from (name person) by some other person, then proof of the exclusive possession by the defendant of the recently stolen (describe goods) is a circumstance from which you may reasonably infer that the defendant received the (describe goods) knowing them to have been stolen and that he received them with dishonest intent. You may not so infer if from all of the evidence, you have a reasonable doubt as to whether the defendant received the (describe goods) knowing them to be stolen or whether he received them with dishonest intent.

Instruction No. 36.420 Receiving Stolen Goods —Supplemental Instructions

Knowledge that the goods were stolen need not be directly proved. It may be shown by circumstances which, if proved, must have caused the defendant to believe the goods were stolen.

Evidence that the property was obtained at less than true value, standing alone, is not sufficient to show that the defendant knew the goods were stolen.

If you believe from the evidence that the (describe goods) were previously stolen from (name person) by some other person, then proof of the exclusive possession by the defendant of the recently stolen (describe goods) is a circumstance from which you may reasonably infer that the defendant received the (describe goods) knowing them to have been stolen and that he received them with dishonest intent, unless, from all of the evidence, you have a reasonable doubt as to whether the defendant received the (describe goods) knowing them to be stolen or whether he received them with dishonest intent.

Instruction No. 36.500 Unauthorized Use— Felony

The defendant is charged with the crime of unauthorized use. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [took; drove; used] (describe vehicle; animal; aircraft; boat; vessel); and**
[(1) That the defendant [assisted; was a party or accessory; was an accomplice] in the [taking; driving; using] of (describe vehicle; animal; aircraft; boat; vessel); and]
- (2) That it belonged to (name of person); and**
- (3) That the owner was not present and did not consent to the [taking; driving; using]; and**
- (4) That the intent of the defendant was to keep the property temporarily from its owner; and**
- (5) That the value of the property was \$1000 or more.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of the felony of unauthorized use, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first four elements of the crime as charged, but has not proved beyond a reasonable doubt that the value of such property was \$1000 or more, and if you find beyond a reasonable doubt that such property was of some value (there need be no proof of minimum or specific value), then you shall find the defendant guilty of the misdemeanor of unauthorized use, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any of the first three elements of the crime or failed to prove such property was of some value, then you shall find the defendant not guilty.

Instruction No. P36.500(a) Unauthorized Use— Felony

Punishment Phase:

You have found the defendant guilty of the crime of unauthorized use.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P36.500(b) Unauthorized Use— Misdemeanor

You have found the defendant guilty of the misdemeanor of unauthorized use.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 36.520 Unauthorized Use— Previous Consent

The consent of the owner of the [vehicle; animal; aircraft; boat; vessel] to its [taking; driving; use] is not to be presumed or implied because of any consent by the owner on a previous occasion to [the same; a different] person.

Instruction No. 36.600 Larceny of Certain Animals

The defendant is charged with the crime of larceny of a [dog; horse; pony; mule; cow; steer; bull; calf]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant took and carried away the (type of animal); and**
- (2) That the animal belonged to (name of person); and**
- (3) That the taking was against the will and without the consent of the owner; and**
- (4) That the taking was with the intent to steal.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P36.600 Larceny of Certain Animals

You have found the defendant guilty of the crime of larceny of a [dog; horse; pony; mule; cow; steer; bull; calf].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 36.800 Grand Larceny— Concealment of Goods or Merchandise

The defendant is charged with the crime of grand larceny by willful concealment of goods or merchandise. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant willfully [concealed; took possession of] the [goods; merchandise] of (name of store or other mercantile establishment); and**
- (2) That the defendant intended [to convert the goods or merchandise to [his own; another's] use without having paid the full purchase price thereof; to defraud the owner of the value of the goods or merchandise]; and**
- (3) That the defendant acted without authority to do so; and**
- (4) That the value of the goods was \$1000 or more.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of grand larceny by willful concealment of goods or merchandise, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first three elements of the crime as charged, but has not proved beyond a reasonable doubt that such property had a value of \$1000 or more, and if you find beyond a reasonable doubt that such property was of some value (there need be no proof of a minimum or specific value), then you shall find the defendant guilty of the misdemeanor of petit larceny by willful concealment of goods or merchandise, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth failed to prove beyond a reasonable doubt any of the first three elements of the crime or failed to prove the merchandise was of some value, then you shall find the defendant not guilty.

Instruction No. P36.800 Grand Larceny— Concealment of Goods or Merchandise

You have found the defendant guilty of the crime of grand larceny by willful concealment of goods or merchandise.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 36.820 Petit Larceny— Concealment of Goods or Merchandise

The defendant is charged with the crime of petit larceny by willful concealment of goods or merchandise. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant willfully** [concealed; took possession of] **the** [goods; merchandise] **of** (name of store or other mercantile establishment); **and**
- (2) That the defendant intended** [to convert the goods or merchandise to [his own; another's] use without having paid the full purchase price thereof; to defraud the owner of the value of the goods or merchandise]; **and**
- (3) That the defendant had no authority to do so.**
- (4) That the** [goods; merchandise] **were** (was) **of some value.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P36.820 Petit Larceny— Concealment of Merchandise, etc.

You have found the defendant guilty of the crime of petit larceny by willful concealment of merchandise.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 36.840 Willful Concealment— Permissible Inference

Proof of the willful concealment of goods or merchandise while still on the premises of a store is a circumstance from which you may reasonably infer that the defendant intended to convert the goods or merchandise and to defraud the owner of the value of the goods or merchandise, unless, from all the evidence, you have a reasonable doubt as to whether such an intent existed.

Instruction No. 36.900 Tampering With Metering Device

The defendant is charged with the crime of tampering with a metering device which is part of a facility used to provide [oil; telephone; telegraph; electric; gas; water; sewer; wastewater] service to the public. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant tampered with a metering device which was part of a facility used to provide [oil; telephone; telegraph; electric; gas; water; sewer; wastewater] service to the public; and**
- (2) That he did so with the intent to prevent the meter from properly registering the amount used; and**
- (3) That the defendant did the act without the authorization of the owner of the metering device.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P36.900 Tampering with Metering Device

You have found the defendant guilty of the crime of tampering with a metering device.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 37.050 Malicious Wounding— Aggravated

The defendant is charged with the crime of aggravated malicious wounding. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [shot, stabbed, cut, or wounded; caused bodily injury by any means to] (name of person); **and**
- (2) That such** [shooting, stabbing, cutting, or wounding; bodily injury] **was with intent to kill or permanently maim, disfigure, disable** (name of person); **and**
- (3) That the act was done with malice; and**
- (4) That as a result of the act** (name of person) **was severely injured and was caused to suffer permanent and significant physical impairment.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty of aggravated malicious wounding.

Instruction No. P37.050 Malicious Wounding— Aggravated

You have found the defendant guilty of the crime of aggravated malicious wounding.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Imprisonment for life; or**
- (2) Imprisonment for life and a fine of a specific amount, but not more than \$100,000; or**
- (3) A specific term of imprisonment, but not less than twenty (20) years; or**
- (4) A specific term of imprisonment, but not less than twenty (20) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 37.100 Malicious Wounding and Lesser Included Offenses—Combined Instruction

The defendant is charged with the crime of malicious wounding. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [shot, stabbed, cut, or wounded; caused bodily injury by any means to] (name of person); **and**
- (2) That such** [shooting, stabbing, cutting, or wounding; bodily injury] **was with intent to kill or permanently maim, disfigure, or disable** (name of person); **and**
- (3) That the act was done with malice.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of malicious wounding [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged but that the act was done unlawfully and not maliciously, then you shall find the defendant guilty of unlawful wounding [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either malicious wounding or unlawful wounding but you do find beyond a reasonable doubt:

- (1) That the defendant willfully touched** (name of person) **without legal excuse or justification; and**
- (2) That the touching was done in an angry, rude, insulting, or vengeful manner,**

then you shall find the defendant guilty of assault and battery [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any of the above crimes, then you shall find the defendant not guilty.

Instruction No. P37.100(a) Malicious Wounding and Lesser Included Offenses—Malicious Wounding

You have found the defendant guilty of the crime of malicious wounding.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years; or**
- (2) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. P37.100(b) Malicious Wounding and Lesser Included Offenses—Unlawful Wounding

You have found the defendant guilty of the crime of unlawful wounding.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P37.100(c) Malicious Wounding and Lesser Included Offenses—Assault and Battery

You have found the defendant guilty of the crime of assault and battery.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 37.150 Strangulation

The defendant is charged with the crime of strangulation of another. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant, without consent, applied pressure to the neck of (name of person); and**
- (2) That such pressure to the neck impeded the blood circulation or respiration of (name of person); and**
- (3) That such pressure to the neck resulted in the wounding or bodily injury of (name of person); and**
- (4) That the act was done knowingly, intentionally, and unlawfully.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of strangulation of another [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt strangulation of another, but you do find beyond a reasonable doubt:

- (1) That the defendant willfully touched (name of person); and**
- (2) That the touching was done without legal excuse or justification; and**
- (3) That the touching was done in an angry, rude, insulting, or vengeful manner; then you shall find the defendant guilty of assault and battery [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].**

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the above crimes, then you shall find the defendant not guilty.

Instruction No. P37.150 Strangulation

You have found the defendant guilty of the felony of strangulation of another.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P37.160 Suffocation

The defendant is charged with the crime of suffocation. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant, without consent, blocked or obstructed the airway of (name of person); and**
- (2) That such blocking or obstructing of the airway impeded the blood circulation or respiration of (name of person); and**
- (3) That such blocking or obstructing the airway resulted in the wounding or bodily injury of (name of person); and**
- (4) That the act was done knowingly, intentionally, and unlawfully.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of suffocation of another [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt suffocation of another, but you do find beyond a reasonable doubt:

- (1) That the defendant willfully touched (name of person); and**
- (2) That the touching was done without legal excuse or justification; and**
- (3) That the touching was done in an angry, rude, insulting, or vengeful manner; then you shall find the defendant guilty of assault and battery [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].**

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the above crimes, then you shall find the defendant not guilty.

Instruction No. P37.160(a) Suffocation

You have found the defendant guilty of the felony of suffocation of another.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P37.160(b) Assault and Battery—Lesser Included Offense of Suffocation

You have found the defendant guilty of the crime of assault and battery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 37.200 Malice—Definition

Malice is that state of mind which results in the intentional doing of a wrongful act to another without legal excuse or justification, at a time when the mind of the actor is under the control of reason. Malice may result from any unlawful or unjustifiable motive including anger, hatred, or revenge. You may, but are not required, to infer malice from any deliberate, willful, and cruel act against another, however sudden.

Heat of passion excludes malice when that heat of passion arises from provocation that reasonably produces an emotional state of mind such as hot blood, rage, anger, resentment, terror, or fear so as to cause one to act on impulse without conscious reflection. Heat of passion must be determined from circumstances as they appeared to the defendant, but those circumstances must be such as would have aroused heat of passion in a reasonable person.

If a person acts upon reflection or deliberation, or after his passion has cooled, or there has been a reasonable time or opportunity for cooling, then the act is not attributable to heat of passion.

Instruction No. 37.250 Wound—Definition

A wound is a breach or disruption of the skin, or of the skin and flesh, produced by external violence. This includes a disruption of the internal skin, such as that within the mouth.

Instruction No. 37.260 Bodily Injury—Definition

Bodily injury is an act that damages, harms, or hurts the body; is an impairment of a function of a bodily member, organ, or mental faculty; is an act of impairment of a physical condition; is an unjust or undeserved infliction of suffering or harm; or is any bodily hurt, whatsoever. The victim need not experience any observable wounds, cuts, bruises, broken bones, or breaking of the skin. Bodily injury includes internal as well as external injuries to the body.

Instruction No. 37.300 Battery—Definition

A battery is the willful touching of another, without legal excuse or justification, done in an angry, rude, insulting, or vengeful manner.

Instruction No. 37.340 Assault and Battery of Judge, Magistrate, Law-Enforcement Officer, Correctional Officer, Firefighter, or Emergency Medical Services Personnel

The defendant is charged with the crime of [assault; assault and battery] of a [judge; magistrate; law-enforcement officer; applicable correctional personnel as defined in Va. Code Ann. § 53.1-1; person employed by the Department of Corrections directly involved in the care, treatment, or supervision of inmates in the custody of the Department or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility; person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice; employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Service; firefighter as defined in Va. Code Ann. § 65.2-102; volunteer firefighter; emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency], engaged in the performance of his public duties. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant committed an [assault; assault and battery] against (name of person); and**
- (2) That the defendant knew or had reason to know, when he committed the [assault; assault and battery] that (name of person) was a [judge; law-enforcement officer; applicable correctional personnel as defined in Va. Code Ann. § 53.1-1; person employed by the Department of Corrections directly involved in the care, treatment, or supervision of inmates in the custody of the Department or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility; person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice; employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Service; firefighter as defined in Va. Code Ann. § 65.2-102; volunteer firefighter; emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency]; and**
- (3) That (name of person) was engaged in the performance of his public duties as a [judge; magistrate; law-enforcement officer; applicable correctional personnel as defined in Va. Code Ann. § 53.1-1; person employed by the Department of Corrections directly involved in the care, treatment, or supervision of inmates in the custody of the Department or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility; person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice; employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Service; firefighter as defined in Va. Code Ann. § 65.2-102; volunteer firefighter; emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency] at the time the defendant committed the [assault; assault and battery].**

If you find that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of [assault; assault and battery] of a [judge; magistrate; law-enforcement officer; applicable correctional personnel as defined in Va. Code Ann. § 53.1-1; person employed by the Department of Corrections directly involved in the care, treatment, or supervision of inmates in the custody of the Department or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility; person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice; employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Service; firefighter as defined in Va. Code Ann. § 65.2-102; volunteer firefighter; emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency] [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has proved beyond a reasonable doubt the first element of the crime as charged, but you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the remaining elements, you shall find the defendant guilty of [assault; assault and battery] [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt the first element of the crime, then you shall find the defendant not guilty.

Instruction No. P37.340(a) Assault and Battery of Judge, Magistrate, Law-Enforcement Officer, Correctional Officer, Firefighter, or Emergency Medical Services Personnel

You have found the defendant guilty of the crime of [assault; assault and battery] of a [judge; magistrate; law-enforcement officer; applicable correctional personnel as defined in Va. Code Ann. § 53.1-1; person employed by the Department of Corrections directly involved in the care, treatment, or supervision of inmates in the custody of the Department or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility; person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice; employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Service; firefighter as defined in Va. Code Ann. § 65.2-102; volunteer firefighter; emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency].

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not less than six (6) months nor more than twelve (12) months; or**
- (3) Confinement in jail for a specific time, but not less than six (6) months nor more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P37.340(b) Assault and Battery of Judge, Magistrate, Law-Enforcement Officer, Correctional Officer Firefighter, or Emergency Medical Services Personnel—Lesser Included Offenses

You have found the defendant guilty of the crime of [assault; assault and battery].

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 37.350 Assault—Definition

An assault is [an overt act intended to do bodily harm to another together with the present ability to cause such harm; an overt act intended to place a person in fear or apprehension of bodily harm that creates in him a reasonable fear or apprehension].

Instruction No. 37.351 Assault—Effect of Words

Words alone can never amount to an assault of any kind.

Instruction No. 37.352 Assault—Effect of Words

Words alone, no matter how grievous or insulting, are never justification for assault [by force or violence].

Instruction No. 37.360 Assault and Battery Against a Family or Household Member—Third or Subsequent Offense

The defendant is charged with the crime of assault and battery against a family or household member, third or subsequent offense. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant committed an assault and battery against (name of person); and**
- (2) That (name of person) was [the defendant's (applicable family or household member under Va. Code Ann. § 16.1-228); and**
- (3) That the defendant has at least two prior convictions against a family or household member of [(i) assault and battery against a family or household member, (ii) malicious or unlawful wounding (iii) aggravated malicious wounding, (iv) malicious wounding by means of a substance, (v) strangulation, or (vi) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, in any combination]; and**
- (4) That each such prior offense occurred on a different date within 20 years of the current offense.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of assault and battery of a [family; household] member, third or subsequent offense [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has proved beyond a reasonable doubt the first two elements of the crime as charged, but you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the remaining elements, you shall find the defendant guilty of assault and battery of a family or household member [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has proved beyond a reasonable doubt the first element of the crime as charged, but you find that the Commonwealth has failed to prove that the person assaulted was a family or household member, then you shall find the defendant guilty of assault and battery [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt the first element of the offense, then you shall find the defendant not guilty.

Instruction No. P37.360(a) Assault and Battery Against a Family or Household Member—Third or Subsequent Offense

You have found the defendant guilty of the crime of assault and battery of a [family or household] member, third or subsequent offense.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P37.360(b) Assault and Battery Against a Family or Household Member—Third or Subsequent Offense—Lesser Included Offenses

You have found the defendant guilty of [assault and battery of a family or household member; assault and battery].

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 37.500 Doubt as to Grade of Offense

If you have a reasonable doubt as to the grade of the offense, then you must resolve that doubt in favor of the defendant and find him guilty of the lesser offense. For example, if you have a reasonable doubt as to whether he is guilty of aggravated malicious wounding or malicious wounding, you shall find him guilty of malicious wounding; if you have a reasonable doubt as to whether he is guilty of malicious wounding or unlawful wounding, you shall find him guilty of unlawful wounding; if you have a reasonable doubt as to whether he is guilty of unlawful wounding or assault and battery, you shall find him guilty of assault and battery; if you have a reasonable doubt as to whether he is guilty at all, you shall find him not guilty.

Instruction No. 38.100 Wounding With Intent to Maim by Mob

The defendant is charged with the crime of being a member of a mob that [wounded; caused bodily injury to] another. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was a member of a mob; and**
- (2) That a member or members of that mob [wounded; caused bodily injury by any means to] (name of person); and**
- (3) That such [wounding; bodily injury] was with intent to maim, disable, disfigure or kill (name of person); and**
- (4) That such act was done maliciously or unlawfully.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P38.100 Wounding With Intent to Maim by Mob

You have found the defendant guilty of the crime of being a member of a mob that [wounded; caused bodily injury to] another.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years; or**
- (2) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 38.150 Murder by Mob

The defendant is charged with the crime of being a member of a mob that killed (name of person). The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was a member of a mob; and**
- (2) That a member or members of that mob committed an act of violence upon the body of (name of person); and**
- (3) That the act of violence resulted in the death of (name of person).**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P38.150 Murder by Mob

You have found the defendant guilty of the crime of murder while being a member of a mob. Upon consideration of all the evidence you shall fix the defendant's punishment at a specific term of imprisonment, but not less than five (5) years nor more than forty (40) years.

Instruction No. 38.175 Acts of Violence by Mob

The defendant is charged with the crime of being a member of a mob that committed an act of violence. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was a member of a mob; and**
- (2) That a member or members of that mob committed [name of act of violence in Va. Code Ann. § 19.2-297.1].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the crime, then you shall find the defendant not guilty.

Instruction No. 38.200 Definition of Mob and Culpability of Members

A mob is any collection of people assembled for the purpose and with the intention of committing an [assault; battery; name of act of violence in *Va. Code Ann. § 19.2-297.1*] upon any person.

[Once the mob is assembled for such purpose, every member of the mob is criminally responsible even though the member may not have actively encouraged, aided, or countenanced the act of (assault; battery; name of act of violence in *Va. Code Ann. § 19.2-297.1*).]

Instruction No. 38.300 Participating in Criminal Act as Member of or Participant in a Criminal Street Gang

The defendant is charged with participating in (name of predicate criminal act) [for the benefit of; at the direction of; in association with] **a criminal street gang. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That the defendant** [actively participated in; was a member of] **a criminal street gang; and**
- (2) That the defendant knowingly and willfully participated in** (name of predicate criminal act); **and**
- (3) That** (name of predicate criminal act) **was committed** [for the benefit of; at the direction of; in association with] **a criminal street gang.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of participating in (name of predicate criminal act) **as a** [active participant in; member of] **a criminal street gang, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].**

If you find from the evidence that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P38.300 Participating in Criminal Act as Member of or Participant in a Criminal Street Gang

You have found the defendant guilty of the crime of participating in (name of predicate criminal act) **as a** [participant in; member of] **a criminal street gang.**

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
 - or**
 - (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**
-

Instruction No. 38.400 Adult Participating in Criminal Act as a Member of or Participant in a Criminal Street Gang—Gang Includes Juvenile

The defendant is charged with participating in (name of predicate criminal act) [for the benefit of; at the direction of; in association with] **a criminal street gang which includes a juvenile member or participant. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That the defendant** [actively participated in; was member of] **a criminal street gang; and**
- (2) That the defendant knowingly and willfully participated in** (name of predicate criminal act); **and**
- (3) That** (name of predicate criminal act) **was committed** [for the benefit of; at the direction of; in association with] **a criminal street gang; and**
- (4) The defendant was 18 years of age or older at the time the** (name of predicate criminal act) **was committed; and**
- (5) The defendant** [knew; had reason to know] **that such criminal street gang included a participant or member who was younger than 18 years of age.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P38.400 Adult Participating in Criminal Act as a Member of or Participant in a Criminal Street Gang—Gang Includes Juvenile

You have found the defendant guilty of the crime of participating in (name of predicate criminal act) **while a** [participant in; member of] **a criminal street gang which included a juvenile** [participant; member].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years; or**
 - (2) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years and a fine of a specific amount, but not more than \$100,000.**
-

Instruction No. 38.500 Recruitment for a Criminal Street Gang

The defendant is charged with the crime of [soliciting; inviting; recruiting; encouraging; causing; attempting to cause] another to [participate in; become a member of] a criminal street gang. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [solicited; invited; recruited; encouraged; caused; attempted to cause] a person to [actively participate in; become a member of] (name of organization, association, or group); and**
- (2) That (name of organization, association, or group) was a criminal street gang; and**
- (3) That the defendant knew (name of organization, association, or group) was a criminal street gang.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P38.500 Recruitment for a Criminal Street Gang

You have found the defendant guilty of the crime of [soliciting; inviting; recruiting; encouraging; causing; attempting to cause] **another to** [actively participate in; become a member of] **a criminal street gang.**

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 38.510 Adult Recruitment of Juvenile for Participation or Membership in Criminal Street Gang

The defendant is charged with the crime of [soliciting; inviting; recruiting; encouraging; causing; attempting to cause] a person younger than 18 years of age to [actively participate in; become a member of] a criminal street gang. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was, at the time of the alleged crime, 18 years of age or older; and**
- (2) That (name of organization, association, or group) was a criminal street gang; and**
- (3) That the defendant [solicited; invited; recruited; encouraged; caused; attempted to cause] a person who was younger than 18 years of age to [actively participate in; become a member of] (name of organization, association, or group); and**
- (4) That the defendant knew (name of organization, association, or group) was a criminal street gang.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P38.510 Adult Recruitment of Juvenile for Participation or Membership in Criminal Street Gang

You have found the defendant guilty of the crime of [soliciting; inviting; recruiting; encouraging; causing; attempting to cause] a juvenile to [actively participate in; become a member of] a criminal street gang.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 38.600 Criminal Street Gang— Definition

A criminal street gang is any ongoing organization, association, or group of three or more persons, whether formal or informal:

- (1) Which has as one of its primary objectives or activities the commission of one or more criminal activities; and**
- (2) Which has an identifiable name or identifying sign or symbol; and**
- (3) Whose members individually or collectively have [engaged in the commission of; attempted to commit; conspired to commit; solicited] **two or more** (list applicable predicate criminal acts), **at least one of which is** (name of applicable act(s) of violence from Va. Code Ann. § 19.2-297.1); **and****
- (4) Such criminal acts were not part of a common act or transaction.**

Instruction No. 39.100 Nonsupport of Spouse or Children

The defendant is charged with the crime of [desertion; nonsupport]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant, without cause, [deserted; willfully neglected; refused or failed to provide for the support and maintenance of] his or her spouse; child under the age of eighteen (18) years of age; child who is crippled or otherwise incapacitated from earning a living]; and

(2) That the defendant's [spouse; child; children] [is; are] in necessitous circumstances.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of nonsupport, [but you shall not fix punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P39.100 Nonsupport of Spouse or Children

You have found the defendant guilty of the crime of [desertion; nonsupport].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$500.**

Instruction No. 39.200 Neglect or Desertion— Inference of Willfulness

If you find from the evidence that the defendant deserted or neglected his or her [spouse; child; children], you may infer that such desertion or neglect was willful unless, from all the evidence, you have a reasonable doubt that the desertion or neglect was willful.

Instruction No. 39.250 Inference of Intent to Abandon

If you find from the evidence that the defendant left his or her [spouse; child; children] in destitute or necessitous circumstances or contributed nothing to the support of his or her [spouse; child; children] for a period of thirty days prior and/or subsequent to his departure, you may infer that the defendant intended to abandon such [spouse; child; children] unless, from all the evidence, you have a reasonable doubt that the abandonment was willful.

Instruction No. 39.300 Nonsupport of Parents by Children

The defendant is charged with the crime of nonsupport of his or her [parents; mother; father]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That an order was entered on (date) by the [Juvenile and Domestic Relations; Circuit] Court requiring the defendant to assist in providing for the support and maintenance of his or her [parents; mother; father]; and**
- (2) That the defendant failed to comply with that order.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, you shall find the defendant guilty of nonsupport of a parent by [a child; children], [but you shall not fix punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P39.300 Nonsupport of Parents by Children

You have found the defendant guilty of the crime of nonsupport of a parent.

Upon consideration of all the evidence you have heard, you shall fix punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$500.**

Instruction No. 40.100 Obscene—Definition

A [writing, picture, or similar visual representation or sound recording, etc.] is obscene when, considered as a whole:

(1) Applying local community standards, it has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters; and

(2) A reasonable person would not find it has any serious literary, artistic, political, or scientific value.

Instruction No. 40.200 Possession of Obscene Item With Intent to Sell

The defendant is charged with the crime of unlawfully possessing an obscene item with the intent to sell it. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the item was obscene; and
- (2) That the defendant possessed it;
- (3) With knowledge of its content and character; and
- (4) With the intent to sell it.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P40.200 Possession of Obscene Item With Intent to Sell

You have found the defendant guilty of the crime of possession of obscene item with intent to sell.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 40.300 Presentation of Obscene Motion Picture

The defendant is charged with the crime of unlawfully presenting an obscene motion picture. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the motion picture was obscene; and**
- (2) That the defendant presented it; and**
- (3) The defendant knew its content and character; and**
- (4) That at the time, the defendant was the manager, or an officer of, or had a financial interest in, the theater**

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P40.300 Presentation of Obscene Motion Picture

You have found the defendant guilty of the crime of presentation of obscene motion picture.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 40.400 Indecent Exposure

The defendant is charged with the crime of indecent exposure. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant intentionally made an obscene [display; exposure] of his [person; private parts]; and**
- (2) That the act was done in [in a public place; a place where others were present]**

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P40.400 Indecent Exposure

You have found the defendant guilty of the crime of indecent exposure.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 41.100 Perjury—General

The defendant is charged with the crime of perjury. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant made a [false statement under oath; false written statement under penalty of perjury]; and**
- (2) That the defendant did so knowingly and willfully; and**
- (3) That such statement was material to any issue then being [tried; heard].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P41.100 Perjury—General

You have found the defendant guilty of the crime of perjury.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 41.200 Perjury—Evidence to Convict

The falsity of a [statement under oath; written statement under penalty of perjury] must be established by two or more witnesses, or by one witness whose testimony is corroborated by circumstances inconsistent with innocence of the defendant and directly tending to support the testimony of the accusing witness.

Instruction No. 41.300 Perjury—Knowingly and Willfully

In order to find that the defendant made a false statement knowingly and willfully, you must find that the defendant knew, at the time he made the statement, that it was false.

Instruction No. 41.400 Perjury—Materiality

For a statement to be material to any issue being [tried; heard] the statement must be one which is relevant to the fact then being [tried; heard] or to any substantial circumstance which tends to prove or disprove such fact.

Instruction No. 41.500 Perjury—Differing Testimony by Defendant on Separate Occasions

The defendant is charged with the crime of perjury. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant knowingly testified under oath as to a material [matter; thing]; and
- (2) That subsequently, under oath, the defendant knowingly gave differing testimony as to the same material [matter; thing]; and
- (3) That such differing testimony on one of the occasions was given with the intent to testify falsely.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P41.500 Perjury—Differing Testimony by Defendant on Separate Occasions

You have found the defendant guilty of the crime of perjury.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 41.600 Perjury—Procuring Another to Give False Testimony Subornation of Perjury

The defendant is charged with the crime of procuring another to [commit perjury; give false testimony under oath]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [procured; induced; counseled; advised] another person to [commit perjury; give false testimony under oath]; and
- (2) That the other person, in fact, [committed perjury; gave false testimony under oath].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P41.600 Perjury—Procuring Another to Give False Testimony Subornation of Perjury

You have found the defendant guilty of the crime of procuring another to [commit perjury; give false testimony under oath].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 42.100 Escape—General

The defendant is charged with the crime of escape. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [was a prisoner in (specify state, local, or community correctional facility as defined in Va. Code Ann. § 53.1-1); was in the custody of an employee of (specify state, local or community correctional facility as defined in Va. Code Ann. § 53.1-1)]; **and**

(2) That the defendant escaped from [that correctional facility; the custody of the person in charge of him].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the crime, then you shall find the defendant not guilty.

Instruction No. P42.100 Escape—General

You have found the defendant guilty of the crime of escape.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 42.110 Escape—General (Felon)

The defendant is charged with the crime of escape. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant was a felon;

(2) That the defendant [was a prisoner in (specify state, local or community correctional facility as defined in Va. Code Ann. § 53.1-1); was in the custody of an employee of (specify state, local or community correctional facility as defined in Va. Code Ann. § 53.1-1)]; **and**

(3) That the defendant escaped from [that correctional facility; the custody of the person in charge of him].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P42.110 Escape—General (Felon)

You have found the defendant guilty of the crime of escape.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than one (1) year nor more than five (5) years.

Instruction No. 42.120 Escape from Custody By Force or Violence

The defendant is charged with the crime of escape from custody by force or violence. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was in the lawful custody of a police officer;**
- (2) That the defendant was charged in writing with a criminal offense before he was taken into custody; and**
- (3) That he escaped [without lawful permission] from custody by force or violence.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty of the crime of escape from custody by force or violence.

Instruction No. P42.120 Escape from Custody By Force or Violence

You have found the defendant guilty of the crime of escape from custody by force or violence.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 42.140 Escape—Without Force or Violence (Misdemeanor or Probation or Parole Violation)

The defendant is charged with the crime of escape. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was** [confined in jail; in the custody of any court; in the custody of any officer of the court; in the custody of any law enforcement officer] **for** [violation of probation or parole; a charge or conviction of a misdemeanor]; **and**
(2) That the defendant escaped from [jail; custody].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the crime, then you shall find the defendant not guilty.

Instruction No. P42.140 Escape—Without Force or Violence (Misdemeanor or Probation or Parole Violation)

You have found the defendant guilty of the crime of escape.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 42.150 Escape—Without Force or Violence (Charged With or Convicted of Felony)

The defendant is charged with the crime of escape. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was charged with or convicted of a felony;**
- (2) That the defendant was [confined in jail; in the custody of any court; in the custody of any officer of the court; in the custody of any law enforcement officer pursuant to a written charge]; and**
- (3) That the defendant left the [jail; custody] without lawful permission.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P42.150 Escape—Without Force or Violence (Charged With or Convicted of Felony)

You have found the defendant guilty of the crime of escape.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 42.160 Escape—Furlough

The defendant is charged with the crime of escape from furlough. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was a prisoner in (specify state correctional facility); and**
- (2) That the defendant was granted a furlough from the facility; and**
- (3) That the defendant [failed to return to the place designated within the prescribed time; failed to remain within the limits of confinement] set by the furlough; and**
- (4) That the defendant's failure to do so was willful.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty as charged [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has proved beyond a reasonable doubt each of the first three elements of the crime as charged, but if you find that the Commonwealth has failed to prove beyond a reasonable doubt willful failure under element four, and if you further find that the Commonwealth has proved beyond a reasonable doubt that the defendant's failure was without authority or just cause, you shall find the defendant guilty of misdemeanor escape from furlough [and you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than six (6) months; or**
- (2) A fine of a specific amount, but not more than \$1,000; or**
- (3) Confinement in jail for a specific time, but not more than six (6) months, and a fine of a specific amount, but not more than \$1,000].**

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the first three elements above, or, having proved beyond a reasonable doubt each of the first three elements, has failed to prove beyond a reasonable doubt that the defendant's failure was either willful under element four or was without just cause or authority, then you shall find the defendant not guilty.

Instruction No. P42.160 Escape—Furlough (Felony)

You have found the defendant guilty of the crime of escape from furlough from a state correctional facility.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than one (1) year nor more than five (5) years.

Instruction No. 42.170 Escape—Work Release (State Prisoner)

The defendant is charged with the crime of failing to comply with the conditions of work release. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was a prisoner sentenced to confinement in a correctional facility; and**
- (2) That the defendant, without proper authority and without just cause, [left the area in which he had been assigned to work; left the area in which he had been assigned to attend an educational or community activity program; left the vehicle or route involved in his going to or coming from the place to which he had been assigned for educational purposes or to work].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of felony escape [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

However, if you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, and you further find there are mitigating circumstances or the culpability of the defendant is minimal, you shall find the defendant guilty of misdemeanor escape [and you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than six (6) months; or**
- (2) A fine of a specific amount, but not more than \$1,000; or**
- (3) Confinement in jail for a specific time, but not more than six (6) months, and a fine of a specific amount, but not more than \$1,000].**

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the above crimes, then you shall find the defendant not guilty.

Instruction No. P42.170 Escape—Work Release (State Prisoner) (Felony)

You have found the defendant guilty of felony escape for failing to comply with the conditions of work release.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 42.180 Escape—Work Release (Jail Inmate)

The defendant is charged with the crime of failing to comply with the conditions of work release. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was a prisoner sentenced to confinement in jail; and**
- (2) That the defendant, without proper authority and without just cause, [left the area in which he had been assigned to work; left the area in which he had been assigned to attend an educational or other rehabilitative program; left the vehicle or route involved in his going to or coming from the place to which he had been assigned for educational or other rehabilitative purposes or to work]; and**
- (3) That the defendant left the Commonwealth.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of failing to comply with the conditions of work release (felony) [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged, but that the Commonwealth has failed to prove beyond a reasonable doubt the third element, then you shall find the defendant guilty of failing to comply with the conditions of work release (misdemeanor) [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either element (1) or element (2) above, or both, then you shall find the defendant not guilty.

Instruction No. P42.180(a) Escape—Work Release (Jail Inmate) (Felony)

You have found the defendant guilty of the crime of failing to comply with the conditions of work release, and that defendant left the jurisdiction of the Commonwealth of Virginia.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P42.180(b) Escape—Work Release (Jail Inmate) (Misdemeanor)

You have found the defendant guilty of the crime of failing to comply with the conditions of work release. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 42.200 Escape—Aiding (Felony)

The defendant is charged with the crime of aiding the escape of a prisoner. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the prisoner was in [jail; prison; custody] on a [conviction; charge] of a felony; and**
- (2) That the defendant [conveyed (name thing conveyed) into the [jail; prison; (name of place where prisoner held in custody)] with intent to make easier the escape of a prisoner; in any way aided a prisoner to escape; in any way aided a prisoner in an attempt to escape; took or attempted to take the prisoner from [jail; prison; custody], by force]; and**
- (3) That the prisoner did escape.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P42.200 Escape—Aiding (Felony)

You have found the defendant guilty of the crime of aiding the escape of a prisoner.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than one (1) year nor more than five (5) years.

Instruction No. 42.220 Escape—Aiding (Misdemeanor)

The defendant is charged with the crime of aiding the escape of a prisoner. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the prisoner was lawfully in [jail; prison; custody]; and**
- (2) That the defendant [conveyed (name thing conveyed) into the [jail; prison; (name of place where prisoner held in custody)] with intent to make easier the escape of a prisoner; in any way aided a prisoner to escape; in any way aided a prisoner in an attempt to escape; took or attempted to take the prisoner from [jail; prison; custody], by force].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the crime, then you shall find the defendant not guilty.

Instruction No. P42.220 Escape—Aiding (Misdemeanor)

You have found the defendant guilty of the crime of aiding the escape of a prisoner.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 42.240 Escape—Voluntarily Allowing Person Charged with Felony or Felon to Escape

The defendant is charged with the crime of voluntarily allowing a prisoner to escape. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was [a sheriff; a jailer; an officer; a guard; an employee of a sheriff, jailer or other officer]; and**
- (2) That the defendant had in his custody a prisoner [detained on a charge of a felony; convicted of a felony]; and**
- (3) That the defendant voluntarily allowed the prisoner to escape.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime then you shall find the defendant not guilty.

Instruction No. P42.240 Escape—Voluntarily Allowing Person Charged with Felony or Felon to Escape

You have found the defendant guilty of the crime of voluntarily allowing a prisoner to escape.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 42.300 Contraband—Delivery of Marijuana or Controlled Drug to Prisoner

The defendant is charged with the crime of [delivering; attempting to deliver; conspiring to deliver] [marijuana; (name of controlled drug)] to a prisoner. The Commonwealth must prove beyond a reasonable doubt that the defendant willfully [delivered; attempted to deliver; conspired to deliver] [marijuana; (name of controlled drug)] to a prisoner.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove the crime beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P42.300 Contraband—Delivery of Marijuana or Controlled Drug to Prisoner

You have found the defendant guilty of the crime of [delivering; attempting to deliver; conspiring to deliver] [marijuana; (name of controlled drug)] to a prisoner.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 42.320 Contraband—Delivery of Firearm, Ammunition or Explosive to Prisoner

The defendant is charged with the crime of [delivering; attempting to deliver; conspiring to deliver] [a firearm; ammunition; an explosive] **to a prisoner. The Commonwealth must prove beyond a reasonable doubt that the defendant willfully** [delivered; attempted to deliver; conspired to deliver] **to the prisoner** [a firearm; ammunition for a firearm; an explosive].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove the crime beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P42.320 Contraband—Delivery of Firearm, Ammunition or Explosive to Prisoner

You have found the defendant guilty of the crime of [delivering; attempting to deliver; conspiring to deliver] [a firearm; ammunition; an explosive] to a prisoner.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years; or**
- (2) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 42.400 Contraband—Possession of Firearm or Firearm Ammunition by Prisoner

The defendant is charged with the crime of possessing [a firearm; ammunition for a firearm]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [was a prisoner in (specify correctional facility as defined in Va. Code Ann. § 53.1-1); in the custody of an employee of (specify correctional facility as defined in Va. Code Ann. § 53.1-1)]; **and**
- (2) That the defendant had in his possession in such** [institution; custody] [a firearm; ammunition for a firearm].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the crime, then you shall find the defendant not guilty.

Instruction No. P42.400 Contraband— Possession of Firearm or Firearm Ammunition by Prisoner

You have found the defendant guilty of the crime of possessing [a firearm; ammunition for a firearm].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 42.500 Prisoner—Injuries to Non-Prisoner

The defendant is charged with the crime of injuring another person while the defendant was a prisoner in a state or local correctional facility. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was** [a prisoner in (name correctional facility as defined in Va. Code Ann. § 53.1-1); an inmate of (name correctional facility); in the custody of an employee of (name correctional facility)]; **and**
- (2) That the defendant injured** [an employee of (name correctional facility); a person lawfully admitted to such institution; a person supervising or working with prisoners]; **and**
- (3) That the injury was inflicted knowingly and willfully.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P42.500 Prisoner—Injuries to Non-Prisoner

You have found the defendant guilty of the crime of injuring another person while the defendant was a prisoner in a state or local correctional facility.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 42.520 Probationer (Parolee)— Injuries to Probation (Parole) Officer

The defendant is charged with the crime of injuring a [probation; parole; local probation; local pretrial services] officer while the defendant was [under the officer's supervision; being investigated by the officer]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was a [probationer; parolee] [under the supervision of a; under investigation by a] [probation; parole; local probation; local pretrial services] officer;**
- (2) That the defendant injured the officer while the officer was in the performance of his duty;**
- (3) That the defendant knew or had reason to know that the [probation; parole; local probation; local pretrial services] officer was in the performance of his duty; and**
- (4) That the injury was inflicted knowingly and willfully.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P42.520 Probationer (Parolee)— Injuries to Probation (Parole) Officer

You have found the defendant guilty of the crime of injuring a [probation; parole; local probation; local pretrial services] officer while the defendant was under the officer's supervision.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 43.100 Maiming, Killing, or Poisoning Animals

The defendant is charged with the crime of [maiming; killing; poisoning] an animal. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [shot; stabbed; wounded; caused bodily injury to; administered poison to; exposed poison with intent that it be taken by] [a horse; a mule; a pony; cattle; swine; livestock] which belonged to another person; and**
- (2) That the defendant intended to [maim; disfigure; disable; kill] such animal; and**
- (3) That the defendant acted with malice.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P43.100 Maiming, Killing, or Poisoning Animals

You have found the defendant guilty of the felony of [maiming; killing; poisoning] an animal.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
- or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 43.200 Breaking, Injuring, Defacing, Destroying, or Preventing the Operation of Vehicle, Aircraft, or Boat

The defendant is charged with the crime of [breaking; injuring; defacing; destroying; preventing the operation of] [a vehicle; an aircraft; a boat; a vessel]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant individually or in association with one or more persons [tampered with; injured; broke; removed] [a part of; parts of] [a vehicle; an aircraft; a boat; a vessel]; and**
- (2) That the act was done for the purpose of [injuring; defacing; destroying] the [vehicle; aircraft; boat; vessel]; and**
- (3) That the defendant acted willfully.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P43.200 Breaking, Injuring, Defacing, Destroying or Preventing the Operation of Vehicle, Aircraft, or Boat

You have found the defendant guilty of the crime of [breaking; injuring; defacing; destroying; preventing the operation of] [a vehicle; an aircraft; a boat; a vessel].

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 43.250 Willful Disposition or Destruction of Watercraft (Felony)

The defendant is charged with the crime of [scuttling; casting away; disposing of; destroying] a [ship; vessel; watercraft]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [scuttled; cast away; disposed of; destroyed in any manner] a [ship; vessel; watercraft]; and**
- (2) That the defendant did the act with the intent to [injure; defraud] the owner or any insurer of the [ship; vessel; watercraft]; and**
- (3) That the defendant acted willfully; and**
- (4) That the value of the [ship; vessel; watercraft] or any property on board was \$1,000 or more.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth proved beyond a reasonable doubt each of the first three elements of the crime as charged, but has failed to prove beyond a reasonable doubt that the value of the [ship; vessel; watercraft; property on board] was \$1,000 or more, then you shall find the defendant guilty of misdemeanor [scuttling; casting away; disposing of; destroying] a [ship; vessel; watercraft] [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If the Commonwealth has failed to prove any of the first three elements of the crime beyond a reasonable doubt, you shall find the defendant not guilty.

Instruction No. P43.250 Willful Disposition or Destruction of Watercraft (Felony)

You have found the defendant guilty of the felony of [scuttling; casting away; disposing of; destroying] a [ship; vessel; watercraft].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 43.300 Opening or Carrying Away Containers Used for Dispensing Fuel Oils

The defendant is charged with the crime of [opening; breaking and opening; carrying away] [a pump; a tank; equipment; a container] used for [dispensing; storing] [gasoline; kerosene; motor oils]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [opened; broke and opened; carried away] [a pump; a tank; equipment; a container] used for [dispensing; storing] [gasoline; kerosene; motor oils]; and**
- (2) That the defendant acted with intent to steal [gasoline; kerosene; motor oil].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the crime, then you shall find the defendant not guilty.

Instruction No. P43.300 Opening or Carrying Away Containers Used for Dispensing Fuel Oils

You have found the defendant guilty of the felony of [opening; breaking and opening; carrying away] [a pump; a tank; equipment; a container] **used for** [dispensing; storing] [gasoline; kerosene; motor oils].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 43.400 Tampering with Device Designed to Receive Money

The defendant is charged with the crime of tampering with a device designed to receive money. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [entered; forced an entrance into; attempted to force an entrance into; tampered with; inserted any part of an instrument into] **a** [parking meter; vending machine; pay telephone; money changing machine; device designed to receive money]; **and**
- (2) That the defendant intended to steal from this device.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the crime, then you shall find the defendant not guilty.

Instruction No. P43.400 Tampering with Device Designed to Receive Money

You have found the defendant guilty of the crime of tampering with a device designed to receive money.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 43.500 Damage to Utility Facility

The defendant is charged with the crime of destroying or damaging a utility facility. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant intentionally destroyed or damaged a facility which was used to furnish [oil; telegraph; telephone; electric; gas; sewer; wastewater; water] service to the public; and**
- (2) That the cost to remedy or repair the damage was \$1,000 or more.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the first element of the crime as charged, but has not proved beyond a reasonable doubt that the cost to remedy or repair the damage was \$1,000 or more, then you shall find the defendant guilty of misdemeanor Damage to Utility Facility. [Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a fine of a specific amount, but not more than \$500.]

If you find that the Commonwealth has failed to prove beyond a reasonable doubt the first element of the crime, then you shall find the defendant not guilty.

Instruction No. P43.500 Damage to Utility Facility

You have found the defendant guilty of the felony of destroying or damaging a utility facility.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 44.100 Rape—General

The defendant is charged with the crime of rape. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [had sexual intercourse with (name of person); caused (name of person) to engage in sexual intercourse with another person]; **and**
- (2) That it was against her will and without her consent; and**
- (3) That it was by force, threat, or intimidation.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P44.100 Rape—General

You have found the defendant guilty of the crime of rape.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at

- (1) Imprisonment for life; or**
- (2) A specific term of imprisonment, but not less than five (5) years.**

Instruction No. 44.140 Rape—Child Under 13

The defendant is charged with the crime of rape. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [had sexual intercourse with (name of child); caused a child to engage in sexual intercourse with (name of person)]; **and**
- (2) That at the time of the act** (name of child) **was under the age of 13.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P44.140 Rape—Child Under 13

You have found the defendant guilty of the crime of rape.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at

- (1) Imprisonment for life; or**
- (2) A specific term of imprisonment, but not less than five (5) years.**

Instruction No. 44.160 Carnal Knowledge of Inmate, Parolee, Probationer, Detainee, Pretrial Defendant, or Posttrial Offender

The defendant is charged with the crime of carnal knowledge of a(n) [person detained or arrested by a law-enforcement officer; inmate; parolee; probationer; juvenile detainee; pretrial defendant; posttrial offender]. **The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime.**

- (1) That the defendant engaged in** [sexual intercourse; cunnilingus; fellatio; anilingus; anal intercourse; animate object sexual penetration; inanimate object sexual penetration] **with** (name of person) **while** (name of person) **was a(n)** [person detained or arrested by a law-enforcement officer; inmate; parolee; probationer; juvenile detainee; pretrial defendant; posttrial offender] [committed to jail; convicted and sentenced to confinement in a state, a local or regional correctional facility or jail; under the jurisdiction of the Department of Corrections; under the jurisdiction of the Department of Juvenile Justice; under the jurisdiction of a secure facility or detention home; under the jurisdiction of a state or local court services unit; under the jurisdiction of a local community-based probation services agency; under the jurisdiction of a pretrial services agency]; **and**
- (2) That the defendant was, at the time he engaged in such** [sexual intercourse; cunnilingus; anilingus; anal intercourse; animate object sexual penetration; inanimate object sexual penetration], **a(n)** [law-enforcement officer of; employee of; contractual employee of; volunteer with] a [state correctional facility; local correctional facility; the regional jail; the Department of Corrections; the Department of Juvenile Justice; a secure facility or detention home; a state or local court services unit; a local community-based probation program; a pretrial services agency]; **and**
- (3) That the defendant was, at the time he engaged in such** [sexual intercourse; cunnilingus; fellatio; anilingus; anal intercourse; animate object sexual penetration; inanimate object sexual penetration], **in a position of authority over** (name of person); **and**
- (4) That the defendant knew that** (name of person) **was under the jurisdiction of a** [state correctional facility; local correctional facility; regional jail; the Department of Corrections; the Department of Juvenile Justice; a secure facility or detention home; a state or local court services unit; a local community-based probation program; pretrial services program].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P44.160 Carnal Knowledge of Inmate, Parolee, Probationer, Detainee, Pretrial Defendant, or Posttrial Offender

You have found the defendant guilty of the crime of carnal knowledge of a(n) [inmate; parolee; probationer; detainee; pretrial defendant; posttrial offender].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 44.200 Carnal Knowledge of a Child Between Thirteen and Fifteen Years of Age

The defendant is charged with the crime of carnal knowledge of a child. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant engaged in (describe specific act or acts) with (name of person); and**
- (2) That at the time of the aforementioned acts, the defendant was at least 18 years of age; and**
- (3) That at the time of the aforementioned acts, (name of person) was 13 years of age or older but under 15 years of age.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P44.200 Carnal Knowledge of a Child Between Thirteen and Fifteen Years of Age

You have found the defendant guilty of the crime of carnal knowledge of a child.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 44.220 Carnal Knowledge— Both Parties Minors

The defendant is charged with the crime of carnal knowledge of a child. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant engaged in (describe specific act or acts) with (name of person); and**
- (2) That at the time of the (describe specific act or acts) (name of person) was 13 years of age or older but under 15 years of age; and**
- (3) That at the time of the (describe specific act or acts) the defendant was under the age of 18 years; and**
- (4) That at the time of the (describe specific act or acts) (name of person) was 3 or more years younger than the defendant.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you should find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P44.220 Carnal Knowledge— Both Parties Minors

You have found the defendant guilty of the crime of carnal knowledge.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 44.300 Rape—Complaining Witness Mentally Incapacitated or Physically Helpless

The defendant is charged with the crime of rape. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

- (1) That the defendant had sexual intercourse with (name of person); and**
- (2) That at the time (name of person) was [mentally incapacitated; physically helpless]; and**
- (3) That at the time of the crime, the defendant knew or should have known (name of person) was [mentally incapacitated; physically helpless]; and**
- (4) That the sexual intercourse was accomplished through the use of the complaining witness's [mental incapacity; physical helplessness].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P44.300 Rape—Complaining Witness Mentally Incapacitated or Physically Helpless

You have found the defendant guilty of the crime of rape.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at

- (1) Imprisonment for life; or**
- (2) A specific term of imprisonment, but not less than five (5) years.**

Instruction No. 44.320 Mentally Incapacitated— Definition

Mental incapacity means a condition which (name of person) had at the time of the crime which prevented [him; her] from understanding the nature or consequences of the sexual act involved and about which the defendant knew or should have known.

Instruction No. 44.340 Physically Helpless— Definition

Physical helplessness means that (name of person) [was unconscious; had a condition which rendered [him; her] physically unable to communicate an unwillingness to act] **at the time of the crime and it was a condition about which the defendant knew or should have known.**

Instruction No. 44.400 Attempted Rape

The defendant is charged with the crime of attempted rape. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

- (1) That the defendant had the intent to have sexual intercourse with (name of person) against her will, without her consent, and by force, threat, or intimidation; and**
- (2) The defendant did a direct act beyond mere preparation toward accomplishing the sexual intercourse.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P44.400 Attempted Rape

You have found the defendant guilty of the crime of attempted rape.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 44.500 Sexual Intercourse— Definition

Sexual intercourse means an actual penetration, no matter how slight, of the defendant's penis into the outer lips of the female sexual organ of (name of person). It is not necessary that there be an ejaculation by the male.

Instruction No. 44.600 Element of Force, Threat, or Intimidation

The element of force, threat, or intimidation required must have been sufficient to overcome any unwillingness on the part of (name of person) to have sexual intercourse.

Instruction No. 44.620 Physical Resistance Not Required

The Commonwealth need not show that (name of person) cried out or physically resisted the defendant in order to convict him of the crime for which he is charged, but the absence of such resistance may be considered to show that the act alleged was not against (name of person's) will.

Instruction No. 44.700 Defense of Consent

Consent by (name of person) is an absolute bar to conviction of rape. If, after consideration of all the evidence, you have a reasonable doubt as to whether (name of person) consented to have intercourse with the defendant, then you shall find the defendant not guilty.

Instruction No. 44.720 Evidence of Previous Acts of Sexual Conduct

In considering whether the sexual intercourse was accomplished through force, threat, or intimidation, or through the use of the complaining witness's mental incapacity or physical helplessness, you may consider prior acts of sexual conduct between (name of victim) and the defendant occurring reasonably near the time of the crime charged.

Instruction No. 44.800 Age Element

In this case, [the age of (name of person) at the time of the alleged sexual intercourse; the age(s) of (name of person) and the defendant at the time of the alleged sexual intercourse] is an essential element of the crime. In your consideration of this, the actual date of birth is controlling.

Even if the defendant did not know the actual age of (name of person), for any reason at all, that is not a defense to this charge.

Instruction No. 44.900 Force and Effect of Deposition

In this case, you have heard the deposition of (name of person) read to you. You should consider this as having the same force and effect as though the testimony had been given orally in Court.

Instruction No. 45.100 Reckless Driving

The defendant is charged with the crime of reckless driving. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was driving a vehicle on a highway; and**
- (2) That he** [was driving in a manner so as to endanger the life, limb or property of any person; name action prohibited by Va. Code Ann. § 46.2-853 to § 46.2-865].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of reckless driving, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P45.100 Reckless Driving

You have found the defendant guilty of the crime of reckless driving.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 45.110 Reckless Driving—On Suspended or Revoked License—Causing Death of Another

Guilt Phase:

The defendant is charged with the crime of reckless driving on a [suspended; revoked] license, causing the death of another. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was driving a vehicle on a highway;**
- (2) That he [was driving in a manner so as to endanger the life, limb, or property of any person; name action prohibited by Va. Code Ann. § 46.2-853 to § 46.2-865];**
- (3) That he was driving without a valid operator's license due to a [suspension; revocation] for a moving violation; and**
- (4) That his reckless driving was the sole and proximate cause of the death of another.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of reckless driving on a [suspended; revoked] license causing the death of another, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt elements (1) and (2) of the above elements of the crime charged, but has not proved beyond a reasonable doubt either or both of elements (3) and (4), then you shall find the defendant guilty of reckless driving, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of elements (1) and (2) of the crime, then you shall find the defendant not guilty.

Instruction No. P45.110 Reckless Driving—On Suspended or Revoked License—Causing Death of Another

Felony:

You have found the defendant guilty of the crime of reckless driving on a [suspended; revoked] license causing the death of another.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specified amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specified amount, but not more than \$2,500.**

Misdemeanor:

You have found the defendant guilty of the crime of reckless driving.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 45.200 Speeding—Calibration

You have received the results of a calibration test of the accuracy of the speedometer in the motor vehicle operated by [the defendant; the arresting officer]. You should consider such results and give them such weight as you deem proper under the facts and circumstances of this case in determining guilt or innocence and, if you find the defendant guilty, in fixing punishment.

Instruction No. 45.250 Speeding—Radar

The determination of the speed of the defendant's automobile by [radar; laser device; microcomputer device] is sufficient to prove his guilt unless other evidence raises a reasonable doubt as to whether the defendant in fact exceeded a speed of (lawful maximum speed) miles per hour.

Instruction No. 45.300 Disregarding Signal by Law Enforcement Officer to Stop

The defendant is charged with the crime of disregarding a signal by law-enforcement officer to stop. The Commonwealth must prove beyond a reasonable doubt each of the following elements of the crime:

- (1) That the defendant received a visible or audible signal from law-enforcement officer to bring his motor vehicle to a stop; and**
- (2) That the defendant drove such motor vehicle in a willful and wanton disregard of such signal so as to interfere with or endanger the operation of the law-enforcement vehicle or endanger a person.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P45.300 Disregarding Signal by Law Enforcement Officer to Stop

You have found the defendant guilty of the crime of disregarding a signal by law-enforcement officer to stop.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 45.310 Affirmative Defense— Defendant Reasonably Believed Pursuer was Not a Law Enforcement Officer

If you find from the evidence that the defendant has shown he reasonably believed he was being pursued by a person other than a law-enforcement officer, then you shall find the defendant not guilty of disregarding a signal by a law-enforcement officer to stop.

Instruction No. 46.100 Riot—General

The defendant is charged with the crime of participating in a riot. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant acted together with two or more other persons in the unlawful use of force or violence; and**
- (2) That the force or violence seriously jeopardized the public safety, peace, or order.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P46.100 Riot—General

You have found the defendant guilty of the crime of participating in a riot.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 46.120 Riot—Carrying Firearm or Other Dangerous Weapon

The defendant is charged with the crime of participating in a riot while carrying a firearm or other deadly or dangerous weapon. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant acted together with two or more other persons in the unlawful use of force or violence; and**
- (2) That the force or violence seriously jeopardized the public safety, peace, or order; and**
- (3) That at the time the defendant carried a [firearm; deadly or dangerous weapon, namely (describe item)].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P46.120 Riot—Carrying Firearm or Other Dangerous Weapon

You have found the defendant guilty of the crime of participating in a riot while carrying a firearm or other deadly or dangerous weapon.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 46.140 Riot—Incitement to Participate

The defendant is charged with the crime of directing, inciting, or soliciting other persons who participate in a riot to acts of force or violence. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant directed, incited, or solicited other persons to acts of force or violence; and**
- (2) That the other persons participated in a riot.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P46.140 Riot—Incitement to Participate

You have found the defendant guilty of the crime of directing, inciting, or soliciting other persons who participate in a riot to acts of force or violence.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 46.160 Riot—Conspiracy

The defendant is charged with the crime of conspiracy to cause or produce a riot. The Commonwealth must prove beyond a reasonable doubt that the defendant conspired with others to cause or produce a riot.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove the crime beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P46.160 Riot—Conspiracy

You have found the defendant guilty of the crime of conspiracy to cause or produce a riot.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 46.200 Unlawful Assembly— General

The defendant is charged with the crime of unlawful assembly. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant assembled with two or more other persons; and**
- (2) That the defendant shared with the two or more other persons a common intent to advance some purpose, whether lawful or unlawful; and**
- (3) That the purpose was to be accomplished by the commission of an act or acts of unlawful force or violence; and**
- (4) That the force or violence was likely to jeopardize seriously public safety, peace, or order; and**
- (5) That the assembly actually tended to create in persons of ordinary courage a well-grounded fear of serious and immediate breaches of public safety, peace, or order.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P46.200 Unlawful Assembly— General

You have found the defendant guilty of the crime of unlawful assembly.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 46.300 Riot or Unlawful Assembly—Remaining After Warning

The defendant is charged with the crime of remaining at a place of [riot; unlawful assembly] after a warning to disperse. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That there was [a riot; an unlawful assembly]; and**
- (2) That the defendant was present at the place of the [riot; unlawful assembly]; and**
- (3) That the defendant was warned to disperse in the name of the State by [the Sheriff; a deputy sheriff; a police official of (name of county, city, or town)]; and**
- (4) That the defendant remained in the place of the [riot; unlawful assembly] after being warned to disperse.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [and fix his punishment at a fine of a specific amount, but not more than \$500].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. 46.320 Riot or Unlawful Assembly—Damage to Property

The defendant is charged with the crime of damaging property while unlawfully or riotously assembled. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was unlawfully or riotously assembled; and**
- (2) That the defendant [pulled down, damaged, or destroyed; began to pull down, damage, or destroy; assisted in pulling down, damaging, or destroying] a [dwelling house; building].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P46.320 Riot or Unlawful Assembly—Damage to Property

You have found the defendant guilty of the crime of damaging property while unlawfully or riotously assembled.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 46.340 Riot or Unlawful Assembly—Injury to Persons

The defendant is charged with the crime of injuring another person while unlawfully or riotously assembled. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was unlawfully or riotously assembled; and**
- (2) That with premeditation, the defendant caused any injury to another person.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P46.340 Riot or Unlawful Assembly—Injury to Persons

You have found the defendant guilty of the crime of injuring another person while unlawfully or riotously assembled.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 46.400 Riot—Definition

Riot is any unlawful use, by three or more persons acting together, of force or violence which seriously jeopardizes the public safety, peace, or order.

Instruction No. 46.420 Unlawful Assembly— Definition

Whenever three or more persons, gathered together, share the common intent to advance some purpose, whether lawful or unlawful, by the commission of an act or acts of unlawful force or violence likely to jeopardize seriously public safety, peace, or order, and the assembly actually tends to create in persons of ordinary courage a well-grounded fear of serious and immediate breaches of public safety, peace, or order, then the gathering together is an unlawful assembly.

Instruction No. 46.500 Obstruction—Free Passage of Others

The defendant is charged with the crime of obstructing free passage of others. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the location was [a public place; private property open to the public]; and**
- (2) That the defendant unreasonably or unnecessarily obstructed the free passage of other persons to, from, or within such [place; property]; and**
- (3) That the defendant had been requested to cease such obstruction or to move on; and**
- (4) That the request was made by [a duly authorized law enforcement officer; the owner or his agent or employee; the lessee or his agent or employee]; and**
- (5) That the defendant failed or refused to cease any such obstruction or to move on.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P46.500 Obstruction—Free Passage of Others

You have found the defendant guilty of the crime of obstructing free passage of others.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 46.520 Obstruction—Resisting Execution of Legal Process

The defendant is charged with the crime of resisting or obstructing execution of legal process. The Commonwealth must prove beyond a reasonable doubt that the defendant acted jointly or in combination with another person to resist or obstruct the execution of legal process, namely (describe the kind of process obstructed).

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find the Commonwealth has failed to prove the crime beyond a reasonable doubt, then you shall find the defendant not guilty.

Instruction No. P46.520 Obstruction—Resisting Execution of Legal Process

You have found the defendant guilty of the misdemeanor of resisting execution of legal process.

Upon consideration of all of the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 47.100 Robbery—General

The defendant is charged with the crime of robbery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant intended to steal; and
- (2) That the defendant took (describe personal property); and
- (3) That the taking was from (name of person) or in his presence; and
- (4) That the taking was against the will of the owner or possessor; and
- (5) That the taking was accomplished by [violence to the person; intimidation of the person; the threat of serious bodily harm; the threat or presenting of a firearm; the threat or presenting of a deadly weapon].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P47.100 Robbery—General

You have found the defendant guilty of the crime of robbery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Imprisonment for life; or**
 - (2) A specific term of imprisonment, but not less than five (5) years.**
-

Instruction No. 47.100(a) Robbery that Caused Serious Bodily Injury to, or the Death of, any Other Person

The defendant is charged with the crime of robbery that caused serious bodily injury to, or the death of, any other person. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant intended to steal; and**
- (2) That the defendant took** (describe personal property); **and**
- (3) That the taking was from** (name of person) **or in his presence; and**
- (4) That the taking was against the will of the owner or possessor; and**
- (5) That the taking was accomplished by** [violence to the person; intimidation of the person; the threat of serious bodily harm; the threat or presenting of a firearm; the threat or presenting of a deadly weapon]; **and**
- (6) That in committing the robbery, the defendant caused serious bodily injury to, or the death of, any other person.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of robbery that caused serious bodily injury to, or the death of, any other person [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt elements (1) through (5) of the crime but not element (6), then you shall find the defendant guilty of simple robbery [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements (1) through (5) of the crime, then you shall find the defendant not guilty.

Instruction No. P47.100(a) Robbery that Caused Serious Bodily Injury to, or the Death of, Any Other Person(for robberies committed after July 1, 2021)

You have found the defendant guilty of the crime of a robbery that caused serious bodily injury to, or the death of any other person. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (a) Imprisonment for life or for any term of imprisonment of not less than 20 years and a fine of not more than \$100,000; or**
- (b) Imprisonment for life or for any term of imprisonment of not less than 20 years.**

Instruction No. 47.100(b) Robbery Committed by Using or Displaying a Firearm in a Threatening Manner

The defendant is charged with the crime of robbery committed by using or displaying a firearm in a threatening manner. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant intended to steal; and**
- (2) That the defendant took (describe personal property); and**
- (3) That the taking was from (name of person) or in his presence; and**
- (4) That the taking was against the will of the owner or possessor; and**
- (5) That the taking was accomplished by [violence to the person; intimidation of the person; the threat of serious bodily harm]; and**
- (6) That the robbery was committed by using or displaying a firearm in a threatening manner.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of robbery committed by using or displaying a firearm in a threatening manner [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt elements (1) through (5) of the crime but not element (6), then you shall find the defendant guilty of simple robbery [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements (1) through (5) of the crime, then you shall find the defendant not guilty.

Instruction No. P47.100(b) Robbery Committed by Using or Displaying a Firearm in a Threatening Manner (for robberies committed after July 1, 2021)

You have determined that the defendant is guilty of committing a robbery committed by using or displaying a firearm in a threatening manner. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (a) Imprisonment for a term not less than 5 years nor more than 20 years and a fine of not more than \$100,000; or**
- (b) Imprisonment for a term not less than 5 years nor more than 20 years.**

Instruction No. 47.100(c) Robbery Using Physical Force not Resulting in Serious Bodily Injury, or Robbery by Using or Displaying a Deadly Weapon Other than a Firearm in a Threatening Manner

The defendant is charged with the crime of robbery using physical force not resulting in serious bodily injury, or robbery by using or displaying a deadly weapon other than a firearm in a threatening manner. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant intended to steal; and**
- (2) That the defendant took** (describe personal property); **and**
- (3) That the taking was from** (name of person) **or in his presence; and**
- (4) That the taking was against the will of the owner or possessor; and**
- (5) That the taking was accomplished by** [violence to the person; intimidation of the person; the threat of serious bodily harm]; **and**
- (6) That the robbery was committed** [using physical force not resulting in serious bodily injury; using or displaying a deadly weapon other than a firearm in a threatening manner].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of robbery [by using physical force not resulting in serious bodily injury; using or displaying a deadly weapon other than a firearm in a threatening manner] **[but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt elements (1) through (5) of the crime but not element (6), then you shall find the defendant guilty of simple robbery [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements (1) through (5) of the crime, then you shall find the defendant not guilty.

Instruction No. P47.100(c) Robbery— Punishment for a Robbery by Using Physical Force and Which Did Not Result in Serious Bodily Injury (for robberies committed after July 1, 2021)

You have determined that the defendant is guilty of committing a robbery by using physical force and which did not result in serious bodily injury, or robbery by using or displaying a deadly weapon other than a firearm in a threatening manner. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (a) Imprisonment for a term not less than one year nor more than 10 years; or**
- (b) Confinement in a jail for not more than 12 months and/or a fine of not more than \$2,500.**

Instruction No. 47.100(d) Simple Robbery— Robbery Using Threats or Intimidation or Robbery by any Other Means not Involving a Deadly Weapon

The defendant is charged with the crime of robbery by using threats or intimidation or robbery by any other means not involving a deadly weapon. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant intended to steal; and**
- (2) That the defendant took (describe personal property); and**
- (3) That the taking was from (name of person) or in his presence; and**
- (4) That the taking was against the will of the owner or possessor; and**
- (5) That the taking was accomplished by[using threats or intimidation; any other means not involving a deadly weapon].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of robbery [using threats or intimidation; any other means not involving a deadly weapon]. [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements (1) through (5) of the crime, then you shall find the defendant not guilty.

**Instruction No. P47.100(d) Robbery—
Punishment for a Simple Robbery—Committed
by Using Threats or Intimidation or Robbery by
Any Other Means not Involving a Deadly
Weapon(for robberies committed after July 1,
2021)**

You have determined the defendant is guilty of committing a robbery by using threats or intimidation or robbery by any other means not involving a deadly weapon. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (a) Imprisonment for a term not less than one year nor more than five years; or**
- (b) Confinement in jail for not more than 12 months and/or a fine of not more than \$2,500.**

Instruction No. 47.150 Definition of “Serious Bodily Injury”

“Serious bodily injury” means bodily injury that involves a substantial risk of death, extreme physical pain, obvious disfigurement that lasts for a long time, or loss or impairment of the function of a bodily member, organ, or mental faculty that lasts for a long time.

Instruction No. 47.160 Definition of a “firearm”

A firearm is any handgun, shotgun, or rifle that either will, or is designed to, or may readily be converted to, expel single or multiple projectiles by action of an explosion of a combustible material.

Instruction No. 47.170 Definition of a “Deadly Weapon”

A deadly weapon is any object or instrument other than a firearm, not part of the human body, that is likely to cause death or great bodily injury because of the manner and under the circumstances in which it is used.

Instruction No. 47.200 Carjacking

The defendant is charged with the crime of carjacking. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [seized; seized control of] a motor vehicle of another; and**
- (2) That the defendant acted with intent to [permanently; temporarily] deprive another in possession or control of that vehicle of that possession or control by means of [partial strangulation; suffocation; striking, beating or other violence to the person; assault or otherwise putting a person in fear of serious bodily harm; the threat or presenting of a firearm; the threat or presenting of a deadly weapon].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P47.200 Carjacking

You have found the defendant guilty of the crime of carjacking.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Imprisonment for life; or**
- (2) A specific term of imprisonment, but not less than fifteen (15) years.**

Instruction No. 48.420 Sodomy—By Force

The defendant is charged with the crime of sodomy by force. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the [penis; mouth; tongue] of the defendant penetrated into the [mouth; anus; female sex organ] of (name of person); and**
- (2) That it was against [his; her] will; and**
- (3) That it was by force, threat, or intimidation.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.420 Sodomy—By Force

You have found the defendant guilty of the crime of sodomy by force.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a term of imprisonment for life or for a specific term, but not less than five (5) years.

Instruction No. 48.440 Forcible Sodomy—Child Under Thirteen (13)

The defendant is charged with the crime of sodomy with a child under the age of thirteen (13). The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant engaged in [cunnilingus; fellatio; anilingus; anal intercourse] with [name of child]; or caused [name of child] to engage in such acts with any other person, and**
- (2) [Name of child] was less than thirteen (13) years of age at the time of such act(s).**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.440 Forcible Sodomy— Child Under Thirteen (13)

You have found the defendant guilty of the crime of sodomy with a child under the age of thirteen (13).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a term of imprisonment for life or for a specific term, but not less than five (5) years.

Instruction No. 48.460 Sodomy—Penetration

To be sodomy by [fellatio; anal intercourse], there must be penetration, no matter how slight, of the penis into the [mouth; anus] of another. Mere touching of the penis to the [mouth; anus] is not sufficient. It is not necessary that there be an ejaculation.

Instruction No. 48.465 Sodomy by Cunnilingus —Penetration

To be sodomy by cunnilingus, there must be penetration, no matter how slight, into the outer lips of the female sexual organ by the [mouth; tongue] of another. Mere touching is not sufficient.

Instruction No. 48.500 Object Sexual Penetration

The defendant is charged with the crime of object sexual penetration. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant penetrated the [anus; outer lips of the female sexual organ] of (name of person) with any [animate/inanimate] object; and
- (2) That it was against [his; her] will; and
- (3) That it was by force, threat, or intimidation of or against (name of person; name of other person).
- [(4) That it was not for a bona fide medical purpose.]

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.500 Object Sexual Penetration

You have found the defendant guilty of the crime of object sexual penetration.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at confinement in the penitentiary for life or for a specific term, but not less than five (5) years.

Instruction No. 48.600 Sexual Battery— Aggravated (Force, Threat, or Intimidation)

The defendant is charged with the crime of aggravated sexual battery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant sexually abused (name of person); and**
- (2) That it was against [his; her] will; and**
- (3) That it was by force, threat, or intimidation; and**
- [(4) That the defendant [caused serious bodily or mental injury to (name of person).] or
- [(4) That the defendant used or threatened to use a dangerous weapon.] or
- [(4) [That (name of person) was at least 13 but less than 15 years old.]

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.600 Sexual Battery— Aggravated (Force, Threat, or Intimidation)

You have found the defendant guilty of the crime of aggravated sexual battery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years and a fine of a specific amount, but not more than \$100,000.

Instruction No. 48.600(a) Sexual Battery— Aggravated (Mental Incapacity/ Physical Helplessness)

The defendant is charged with the crime of aggravated sexual battery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant sexually abused (name of person); and**
- (2) That the sexual abuse was accomplished through the use of (name of person)'s [mental incapacity; physical helplessness]; and**
- (3) That at the time of the crime the defendant knew or should have known (name of person) was [mentally incapacitated; physically helpless].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.600(a) Sexual Battery— Aggravated (Mental Incapacity/ Physical Helplessness)

You have found the defendant guilty of the crime of aggravated sexual battery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years and a fine of a specific amount, but not more than \$100,000.

Instruction No. 48.600(b) Sexual Battery— Aggravated (Child under 13 Years Old)

The defendant is charged with the crime of aggravated sexual battery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant sexually abused (name of child); and**
- (2) That at the time of the act (name of child) was under the age of 13 years.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.600(b) Sexual Battery— Aggravated (Child under 13 Years Old)

You have found the defendant guilty of the crime of aggravated sexual battery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.

Instruction No. 48.600(c) Sexual Battery— Aggravated (Child at Least 13 Years Old but Younger than 18 Years Old Assaulted by Relative)

The defendant is charged with the crime of aggravated sexual battery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant sexually abused (name of child); and**
- (2) That at the time of the act (name of child) was at least 13 years of age, but younger than 18 years of age; and**
- (3) That the defendant is (name of child)'s [parent, step-parent, grandparent or step-grandparent].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.600(c) Sexual Battery— Aggravated (Child at Least 13 Years Old but Younger than 18 Years Old Assaulted by Relative)

You have found the defendant guilty of the crime of aggravated sexual battery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years and a fine of a specific amount, but not more than \$100,000.

Instruction No. 48.600(d) Sexual Battery— Aggravated (Massage Therapist, Practitioner of Healing Arts, or Physical Therapist)

The defendant is charged with the crime of aggravated sexual battery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant sexually abused (name of person); and**
- (2) That the defendant was [a massage therapist; a person purporting to be a massage therapist; a person practicing the healing arts or a person purporting to practice the healing arts; a physical therapist or a person purporting to be a physical therapist]; and**
- (3) That the defendant committed the offense during the [actual; purported] [practice of massage therapy; practice of the healing arts; practice of physical therapy]; and**
- (4) That the offense is not a recognized form of treatment in the profession; and**
- (5) That (name of person) did not give their express consent.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and you have heard further evidence].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.600(d) Sexual Battery— Aggravated (Massage Therapist, Practitioner of Healing Arts or Physical Therapist)

You have found the defendant guilty of the crime of aggravated sexual battery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at a specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years and a fine of a specific amount, but not more than \$100,000.

Instruction No. 48.605 Massage Therapist— Defined

Massage therapist means a person who meets the qualifications for certification by the Board of Nursing, and who is licensed by the Board of Nursing.

Instruction No. 48.610 Massage Therapy— Defined

Massage therapy means the treatment of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body, not to include manipulation of the spine or joints.

Instruction No. 48.615 Person Practicing the Healing Arts or Purporting to Practice the Healing Arts—Defined

A person practicing or purporting to practice the healing arts means a person who [opens an office for such purpose; advertises or announces to the public in any manner a readiness to practice; uses in connection with his name the words or letters “Doctor,” “Dr.,” “M.D.,” “D.O.,” “D.P.M.,” “D.C.,” “Healer,” “N.P.,” or any other title, word, letter or designation intending to designate or imply that he is a practitioner of the healing arts or that he is able to heal, cure or relieve those suffering from any injury, deformity or disease].

Evidence that a person has signed [a birth certificate, except where persons other than physicians are required to sign; a death certificate; any statement certifying that the person has rendered professional service to the sick or injured; a prescription for drugs or other remedial agents], **if believed, may be sufficient to establish that the defendant was a person practicing the healing arts or purporting to practice the healing arts, unless, from all the evidence, you have a reasonable doubt that the defendant was a person practicing or purporting to practice the healing arts.**

Instruction No. 48.620 Healing Arts—Defined

Healing arts means the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities.

Instruction No. 48.625 Physical Therapist— Defined

A physical therapist means any person licensed by the Board of Physical Therapy to engage in the practice of physical therapy.

Instruction No. 48.630 Practice of Physical Therapy—Defined

The practice of physical therapy means, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders; and also includes the administration, interpretation, documentation, and evaluation of tests and measurements of bodily functions and structures within the scope of practice of the physical therapist.

Instruction No. 48.640 Sexual Battery

The defendant is charged with the crime of sexual battery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant sexually abused (name of person); and**
- (2) That it was against [his; her] will; and**
- (3) That it was by force, threat, intimidation, or ruse.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.640 Sexual Battery

You have found the defendant guilty of the crime of sexual battery.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 48.650 Sexual Battery of Inmate, Parolee, Probationer, Pretrial Defendant, or Posttrial Offender

The defendant is charged with the crime of sexual battery of a(n) [inmate; parolee; probationer; pretrial defendant; posttrial offender]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant sexually abused (name of person) while (name of person) was a(n) [inmate; parolee; probationer; pretrial defendant; posttrial offender] [committed to jail; convicted and sentenced to confinement in a local, state, or regional correctional facility or jail] or under the jurisdiction of [the Department of Corrections; a local community-based probation program; a pretrial services program; a local or regional jail for the purposes of imprisonment; a work program; other parole/probationary or pretrial services program]; and

(2) That the defendant was a(n) [employee of; contractual employee of; volunteer with] [a local/regional jail; the Department of Corrections; a local community-based probation program; a pretrial services program] at the time he sexually abused (name of person); and

(3) That the defendant was in a position of authority over (name of person) at the time he sexually abused (name of person); and

(4) That the defendant knew that (name of person) was under the jurisdiction of [a local/regional jail; the Department of Corrections; a local community-based probation program; a pretrial services program].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.650 Sexual Battery of Inmate, Parolee, Probationer, Pretrial Defendant, or Posttrial Offender

You have found the defendant guilty of the crime of sexual battery of a(n) [inmate; parolee; probationer; pretrial defendant; posttrial offender].

Upon consideration of the evidence, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500**

Instruction No. 48.660 Sexual Abuse— Definition

Sexual abuse means an act committed with the intent to sexually molest, arouse, or gratify any person, where the defendant intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts.

Instruction No. 48.665 Intimate Parts— Definition

“Intimate parts” means the genitalia, anus, groin, breast, or buttocks of any person.

Instruction No. 48.670 Threat of Force— Definition

Threat of force means expression of an intention to do bodily harm or to use force. It is not shown by intimidation.

Instruction No. 48.675 Intimidation—Definition

Intimidation means putting a victim in fear of bodily harm by exercising such domination and control of [him; her] as to overcome [his; her] mind and overbear [his; her] will.

[Intimidation may be caused by the imposition of psychological pressure on one who, under the circumstances, is vulnerable and susceptible to such pressure.]

Instruction No. 48.680 Consent

Consent by (name of person) is an absolute bar to conviction of (name of sexual assault crime). If, after consideration of all the evidence, you have a reasonable doubt as to whether (name of person) consented to (name of sexual assault crime) with the defendant, then you shall find him not guilty.

Instruction No. 48.700 Prostitution—General

The defendant is charged with the crime of prostitution. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant** [had sexual intercourse; performed cunnilingus; performed fellatio; performed anilingus; engaged in anal intercourse; touched the unclothed genitals or anus of another person with the intent to sexually arouse or gratify; allowed another to touch his unclothed genitals or anus with the intent to sexually arouse or gratify] **with another person not his spouse; and**
(2) That it was for [money; money's equivalent].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.700 Prostitution—General

You have found the defendant guilty of the crime of prostitution.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 48.720 Prostitution—Attempt

The defendant is charged with the crime of attempted prostitution. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant offered to** [have sexual intercourse; perform cunnilingus; perform fellatio; perform anilingus; engage in anal intercourse; touch the unclothed genitals or anus of another person with the intent to sexually arouse or gratify; allow another to touch his unclothed genitals or anus with the intent to sexually arouse or gratify] **with another person who was not** [his; her] **spouse; and**
- (2) That it was for** [money; money's equivalent]; **and**
- (3) That after the offer the defendant did a substantial act toward** [having the sexual intercourse; committing one of the acts listed above].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.720 Prostitution—Attempt

You have found the defendant guilty of the crime of attempted prostitution.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 48.800 Bawdy Place—Keeping or Visiting

The defendant is charged with the crime of [keeping; visiting; residing in] a bawdy place. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [kept; visited; resided in] a bawdy place; and**
- (2) That it was for immoral purposes.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P48.800 Bawdy Place—Keeping or Visiting

You have found the defendant guilty of the crime of [keeping; visiting; residing in] a bawdy place.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 48.850 Bawdy Place—Definition

A “bawdy place” is any place within or outside any building or structure that is used or is to be used for lewdness, assignation, or prostitution.

Instruction No. 48.860 Keeping—Definition

“Keeping” means owning, maintaining, managing, or operating a place with knowledge of the illegal activities going on.

Instruction No. 49.100 Trespass After Having Been Forbidden to Do So

The defendant is charged with the crime of trespass. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [went on; remained on] the [land; buildings; premises] of another; and**
- (2) That he did so willfully; and**
- (3) That the defendant had been forbidden to do so, orally or in writing, by the [owner; lessee; custodian; agent of the owner, lessee, custodian; person lawfully in charge] or by a sign posted on such [land; buildings; premises] by or at the direction of [such persons; the agent of any such person] at a place where such sign may reasonably be seen.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the above elements of the crime, then you shall find the defendant not guilty.

Instruction No. P49.100 Trespass After Having Been Forbidden to Do So

You have found the defendant guilty of trespass.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 49.120 Trespass in Violation of Court Order

The defendant is charged with the crime of trespass in violation of a court order. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [went on; remained on] the [land; buildings; premises] after having been prohibited from doing so by order of a court; and**
- (2) That the defendant had been served with a copy of such order.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P49.120 Trespass in Violation of Court Order

You have found the defendant guilty of the crime of trespass in violation of a court order.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 49.130 Trespass on Posted Property

The defendant is charged with the crime of trespass on posted property. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant willfully went on the [lands; waters; ponds; boats; blinds] of another to hunt, fish or trap; and**
- (2) That he neither had the written consent of, nor was he in the presence of, the owner or his agent; and**
- (3) That the [lands; waters; ponds; boats; blinds] were posted by the owner or lessee:** [by placing signs prohibiting hunting, fishing or trapping where they may reasonably be seen; by placing identifying (Insert type and color of paint as prescribed by the Department of Wildlife Resources) paint marks, each consisting of a vertical line of at least two (2) inches in width and at least eight (8) inches in length with the center of each mark no less than three (3) feet nor more than six (6) feet from the ground or normal water surface, on trees or posts at each road entrance and adjacent to public roadways and public waterways adjoining the property, and such marks were readily visible to any person approaching the property].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P49.130 Trespass on Posted Property

You have found the defendant guilty of the crime of trespass on posted property.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 49.200 Entrance Onto Property to Damage It or Its Contents or Interfere with the Rights of the User

The defendant is charged with the crime of entering the property of another for the purpose of [damaging such property; damaging the contents of such property]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant willfully entered the [land; dwelling; outhouse; building] of another; and**
- (2) That the defendant entered for the purpose of [damaging such property; damaging the contents of such property].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P49.200 Entrance Onto Property to Damage It or Its Contents or Interfere with the Rights of the User

You have found the defendant guilty of the crime of entering property of another for the purpose of damaging [it; its contents].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 49.210 Definition of the Term Disability

The Term “disability” means a physical or mental impairment that substantially limits one or more of a person’s major life activities.

Instruction No. 49.300 Peeping or Spying Into Structure Occupied as Dwelling

The defendant is charged with the crime of [peeping; spying; attempting to peep; attempting to spy] into a structure occupied as a dwelling. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) [That the defendant entered upon the property of another; That the defendant entered without just cause upon property owned by him and leased or rented to another under circumstances that would violate the occupant's reasonable expectation of privacy] and**
- (2) That the defendant** [secretly; furtively] [peeped; spied; attempted to peep; attempted to spy] [through; into][a window; a door; an opening] **of** [a building; a structure; an enclosure] **and**
- (3) That such** [building; structure; enclosure] **was** [occupied; intended for occupancy] **as a dwelling.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P49.300 Peeping or Spying Into Structure Occupied as Dwelling

You have found the defendant guilty of the crime of [peeping; spying; attempting to peep; attempting to spy] into a structure occupied as a dwelling.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 49.310 Peeping or Spying— Circumstances of Privacy

The defendant is charged with the crime of [peeping; spying; attempting to peep; attempting to spy]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant used a peephole or other opening to secretly or furtively [peep; spy; attempt to peep; attempt to spy] into a [restroom; dressing room; locker room; hotel room; motel room; tanning bed; tanning booth; bedroom; or other location or enclosure]; and**
- (2) That his purpose in doing so was the viewing of a nonconsenting person who was [totally nude; clad in undergarments; in a state of undress exposing the genitals, pubic area, buttocks or female breast]; and**
- (3) The circumstances were such that the nonconsenting person had a reasonable expectation of privacy.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P49.310 Peeping or Spying— Circumstances of Privacy

You have found the defendant guilty of the crime of [peeping; spying; attempting to peep; attempting to spy].

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 49.400 Common Law Trespass to Realty

The defendant is charged with the crime of trespass. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant made an entry upon the [land; premises] of another; and**
- (2) That the entry was unauthorized; and**
- (3) That such unauthorized entry upon the [land; premises] of another was made under such circumstances or in such a manner as to [constitute a breach of the peace; threaten a breach of the peace].**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

Instruction No. P49.400 Common Law Trespass to Realty

You have found the defendant guilty of the crime of trespass.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 49.450 Breach of Peace

Peace is the tranquility enjoyed by the citizens of a community. A breach of the peace is an act of disturbing the public peace, or a violation of public order or public decorum. It is not necessary for there to be an act of personal violence to constitute a breach of peace.

Instruction No. 49.500 Claim of Right (Trespass)

If you find from the evidence that the defendant believed he had a good faith claim of right to enter onto the property, even though this belief was mistaken, you shall find the defendant not guilty of trespass. A good faith claim of right is a sincere, although perhaps mistaken, good faith belief that one has a legal right to be on the property. The claim need not be of title or ownership of the property, but it must rise to the level of authorization.

Instruction No. 50.100 Unauthorized Use of Food Stamps, Electronic Benefit Transfer Cards, or Energy Assistance Programs

The defendant is charged with the crime of (name of crime). The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant knowingly:

[(a) transferred; acquired; altered; trafficked in; used [food stamps; electronic benefit transfer cards; benefits from energy assistance programs]; or

[(b) possessed [food coupons; authorization to purchase cards; benefits from energy assistance programs; (specify benefits card listed in Va. Code Ann. § 63.2-523)]]; **and**

(2) That the defendant did so with the intent to defraud; and

(3) That the defendant did so in a manner not authorized by law; and

(4) That the amount involved was \$1,000 or more.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of (name of crime) as grand larceny, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged but you do not find beyond a reasonable doubt that the value of all [food stamps; electronic benefit transfer cards; benefits from energy assistance programs; (name other Va. Code § 63.2-523 benefit)] [transferred; acquired; altered; trafficked in; possessed; used] by the defendant exceeded \$1,000, and if you find beyond a reasonable doubt that such items were of some value, then you shall find the defendant guilty of (name of crime) as petit larceny, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the first two elements of the crime, or that such [food stamps; electronic benefit transfer cards; benefits from energy assistance programs; (name other Va. Code § 63.2-523 benefit)] were of some value, then you shall find the defendant not guilty.

Instruction No. P50.100(a) Unauthorized Use of Food Stamps, Electronic Benefit Transfer Cards, or Energy Assistance Programs (Grand Larceny)

You have found the defendant guilty of the crime of (name of crime) as grand larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P50.100(b) Unauthorized Use of Food Stamps, Electronic Benefit Transfer Cards, or Energy Assistance Programs (Petit Larceny)

You have found the defendant guilty of the crime of (name of crime) as petit larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 50.200 Making False Representation to Obtain Public Assistance or Benefits

The defendant is charged with the crime of making false representation to obtain public [assistance; benefits]. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant [obtained; attempted to obtain; aided or abetted another in obtaining] public [assistance; benefits] to which he was not entitled by means of a [willful false statement or representation; impersonation; fraudulent device]; and**
- (2) The act was with the intent to defraud; and**
- (3) That the [assistance; benefits] [received; sought] was of the value of \$1,000 or more.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of (name of crime) as grand larceny, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged but you do not find beyond a reasonable doubt that the value of all [assistance; benefits] [received; sought] by the defendant exceeded \$1,000, and if you find beyond a reasonable doubt that such items were of some value, then you shall find the defendant guilty of (name of crime) as petit larceny, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the first two elements of the crime, or that such [assistance; benefits] were of some value, then you shall find the defendant not guilty.

Instruction No. P50.200(a) Making False Representation to Obtain Public Assistance or Benefits (Grand Larceny)

You have found the defendant guilty of the crime of (name of crime) as grand larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P50.200(b) Making False Representation to Obtain Public Assistance or Benefits (Petit Larceny)

You have found the defendant guilty of the crime of (name of crime) as petit larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 50.300 Failure to Notify Local Department of Social Services of Changes in Circumstances

The defendant is charged with the crime of failure to notify the local Department of Social Services of change in circumstances. The Commonwealth must prove beyond a reasonable doubt the following elements of that crime:

- (1) That the defendant willfully failed to notify the local Department of Social Services of a change in circumstances which he knew or reasonably should have known would materially affect his eligibility for assistance or the amount of the public assistance; and**
- (2) That the failure to notify was with intent to defraud; and**
- (3) That thereafter the defendant received public assistance of a value of \$1,000 or more to which he was not entitled.**

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime, then you shall find the defendant guilty of (name of crime) as grand larceny, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the crime as charged but you do not find beyond a reasonable doubt that the value of public assistance received by the defendant exceeded \$1,000, and if you find beyond a reasonable doubt that such assistance was of some value (there need be no proof of a minimum or specific value), then you shall find the defendant guilty of (name of crime) as petit larceny, [but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you].

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the first two elements of the crime, or that such public assistance was of some value, then you shall find the defendant not guilty.

Instruction No. P50.300(a) Failure to Notify Local Department of Social Services of Change in Circumstances (Grand Larceny)

You have found the defendant guilty of (name of crime) as grand larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than twenty (20) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. P50.300(b) Failure to Notify Local Department of Social Services of Change in Circumstances (Petit Larceny)

You have found the defendant guilty of (name of crime) as petit larceny.

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 52.100 Alibi

The defendant relies upon the defense that he was not present at the time and place the alleged crime was committed. If, after consideration of all the evidence, you have a reasonable doubt that the defendant was present at the time and place the alleged crime was committed, you shall find him not guilty.

Instruction No. 52.200 Claim of Right

If you believe the defendant [took the property he is charged with stealing; converted to his own use the property he is charged with embezzling; took the property in the robbery with which he is charged; engaged in (name criminal activity)] **under a belief that he had a good faith claim of right to** [take it; engage in that activity], **then, even though his belief was mistaken, you shall find the defendant not guilty of** [larceny; larceny by embezzlement; robbery; (name criminal activity)].

Instruction No. 52.300 Duress

If you find from the evidence that the defendant acted under duress, then you must find him not guilty. In order for the defendant to use the defense of duress, you must find from the evidence that he was threatened and that he had a reasonable fear of imminent death or serious bodily injury. The defense of duress is not available if the defendant had a reasonable opportunity to escape and did not do so, or if he had a reasonable opportunity to avoid committing the crime without being harmed.

Instruction No. 52.400 Entrapment

Entrapment is the origination and planning of a crime by an officer of the law and his procurement of its commission by one who would not have committed it except for the trickery, persuasion or fraud of the officer. Where a person intends to and does commit the crime, the fact that officers of the law provided a favorable opportunity for, aided or encouraged the commission of the crime is not entrapment.

If you believe:

- (1) That the defendant had no previous intent or purpose to commit the crime; and**
- (2) That an officer of the law, directly or through his agents, originated in the mind of the defendant the idea to commit the crime; and**
- (3) That an officer of the law, directly or through his agents, caused the defendant to commit the crime by trickery, persuasion or fraud,**

then you shall find the defendant not guilty even though you may believe from the evidence that he consented to the commission of the crime.

Instruction No. 52.500 Self-Defense—Defendant Without Fault

If you believe that the defendant was without fault in provoking or bringing on the [fight; difficulty], and you further believe that:

- (1) he reasonably feared, under the circumstances as they appeared to him, that he was in imminent danger of bodily harm; and**
- (2) he used no more force, under the circumstances as they appeared to him, than was reasonably necessary to protect himself from the perceived harm,**

then he acted in self-defense, and you shall find the defendant not guilty.

Instruction No. 52.510 Self-Defense—Defendant With Fault—Retreat to Wall

If you believe that the defendant was to some degree at fault in provoking or bringing on the [fight; difficulty], but you further believe that:

- (1) he retreated as far as he safely could under the circumstances in a good faith attempt to abandon the fight; and**
- (2) he made known his desire for peace by word or act; and**
- (3) he reasonably feared, under the circumstances as they appeared to him, that he was in imminent danger of bodily harm; and**
- (4) he used no more force, under the circumstances as they appeared to him, than was reasonably necessary to protect himself from the perceived harm,**

then he acted in self-defense, and you shall find the defendant not guilty.

Instruction No. 52.515 Defense of Property

A person is entitled to use force for the protection of [his/her] property, but the force used must be reasonable in relation to the harm threatened. [Force that endangers human life or does great bodily harm, or that threatens human life or great bodily harm, is an unreasonable use of force when used in defense of property.] **You must decide whether the use of force by (name of defendant) was reasonable under all of the particular circumstances of this case to protect [his/her] property.**

If you find that the defendant used reasonable force in defense of property, then you shall find the defendant not guilty.

Instruction No. 52.520 Right to Arm

A person who reasonably believes that another intends to attack him for the purpose of killing him or doing him serious bodily harm has a right to arm himself for his own necessary self-protection. In such a case, no inference of malice can be drawn from the fact that he armed himself.

Instruction No. 52.525 Self-Defense— Presentation of or Brandishing a Firearm (Right to Threaten Force)

If you believe from the evidence that the defendant was without fault in provoking or bringing on the incident and if you further believe that the defendant reasonably feared, under the circumstances as they appeared to him, that he was in danger of being killed or that he was in danger of great bodily harm, then his [pointing, holding, brandishing] a firearm was in self-defense and you shall find the defendant not guilty.

Instruction No. 52.530 Accident

Where the defense is that the [homicide; malicious wounding; unlawful wounding; (name other intentional act to which the defense applies)] **was an accident, the defendant is not required to prove this fact. The burden is on the Commonwealth to prove beyond a reasonable doubt that the** [homicide; malicious wounding; unlawful wounding; (name other intentional act to which the defense applies)] **was not accidental. If, after considering all the evidence, you have a reasonable doubt whether the** [homicide; malicious wounding; unlawful wounding; (name other intentional act to which the defense applies)] **was accidental or intentional, then you shall find the defendant not guilty.**

Instruction No. 53.100 Presumption of Sanity— Burden of Proof

The defendant is presumed to have been sane at the time of the commission of the crime. In order to be found not guilty on the ground of insanity, the defendant must prove by the greater weight of the evidence that he was insane when the crime was committed.

Instruction No. 53.150 Insanity—Definition

If you find from the greater weight of the evidence that at the time of the crime the defendant was insane, then you must find him not guilty by reason of insanity even though you find that he committed the crime.

The defendant was insane if, because of a mental disease or defect, he did not understand the nature, character, and consequences of his act or he was unable to distinguish right from wrong.

Instruction No. 53.160 Irresistible Impulse— Definition

If you find from the evidence that the defendant knew the nature, character and consequences of his act and knew that his act was wrong, you may still find him not guilty by reason of insanity if you find from the greater weight of the evidence that his mind was so impaired by disease that he was totally deprived of the mental ability to control or restrain his impulse to commit the criminal act.

Instruction No. 53.170 Mental Illness Without Insanity Defense

You have heard evidence of the defendant's [mental illness; intellectual disability; developmental disability; autism spectrum disorder]. You are to consider that evidence only in determining whether the defendant had the intent required at the time the alleged crime was committed. If, after considering all the evidence, you have reasonable doubt the defendant possessed the intent required for the crime charged or a lesser-included offense, you shall find the defendant not guilty.

Instruction No. 53.180 Expert Witnesses

It is your responsibility to decide whether the defendant was insane at the time the crime was committed. You are not required to accept the opinion of any expert witness as to whether the defendant was sane or insane. You should give the testimony such consideration as you feel it is entitled along with the other evidence in the case.

Instruction No. 53.185 Expert Witness—Mental Illness Without Insanity Defense

It is your responsibility to decide whether the defendant possessed the required intent at the time the alleged crime was committed. You are not required to accept the opinion of any expert witness in determining whether the defendant possessed such intent. You should give the testimony of an expert such consideration as you feel it is entitled along with the other evidence in this case.

Instruction No. 53.200 Intoxication—Voluntary

Voluntary intoxication is not a defense to (name of crime). Even if you find that the defendant was greatly intoxicated by the voluntary use of [alcohol; drugs; other substances], you must still find him guilty if you find that the Commonwealth has proved every element of the crime beyond a reasonable doubt.

Instruction No. 53.300 Intoxication— Involuntary

Intoxication is involuntary when it is produced in a person without his willing and knowing use of [intoxicating liquor; drugs; (other substance)].

If you believe that the defendant:

- (1) Was unwillingly and unknowingly made intoxicated by [the fraudulent contrivance of others; an accident or mistake; an error of his physician]; and**
- (2) The intoxication so unsettled the defendant's reason that he did not understand the nature, character and consequences of his act or he was unable to distinguish right from wrong; then**

you shall find the defendant not guilty.

Instruction No. 54.100 Class 1 Felony

You have found the defendant guilty of the crime of (name of Class 1 felony).

Upon consideration of all the evidence you have heard, you shall fix his punishment at:

- (1) Imprisonment for life; or**
- (2) Imprisonment for life and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 54.200 Class 2 Felony

You have found the defendant guilty of the crime of (name of Class 2 felony).

Upon consideration of all the evidence you have heard, you shall fix his punishment at:

- (1) Imprisonment for life; or**
- (2) Imprisonment for life and a fine of a specific amount, but not more than \$100,000; or**
- (3) A specific term of imprisonment, but not less than twenty (20) years; or**
- (4) A specific term of imprisonment, but not less than twenty (20) years and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 54.300 Class 3 Felony

You have found the defendant guilty of the crime of (name of Class 3 felony).

Upon consideration of all the evidence you have heard, you shall fix his punishment at:

- (1) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years; or**
- (2) A specific term of imprisonment, but not less than five (5) years nor more than twenty (20) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 54.400 Class 4 Felony

You have found the defendant guilty of the crime of (name of Class 4 felony).

Upon consideration of all the evidence you have heard, you shall fix his punishment at:

- (1) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years;**
- or**
- (2) A specific term of imprisonment, but not less than two (2) years nor more than ten (10) years, and a fine of a specific amount, but not more than \$100,000.**

Instruction No. 54.500 Class 5 Felony

You have found the defendant guilty of the crime of (name of Class 5 felony).

Upon consideration of all the evidence you have heard, you shall fix his punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than ten (10) years;**
or
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 54.600 Class 6 Felony

You have found the defendant guilty of the crime of (name of Class 6 felony).

Upon consideration of all the evidence you have heard, you shall fix his punishment at:

- (1) A specific term of imprisonment, but not less than one (1) year nor more than five (5) years; or**
- (2) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (3) A fine of a specific amount, but not more than \$2,500; or**
- (4) Confinement in jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

Instruction No. 54.700 Class 1 Misdemeanor

You have found the defendant guilty of the crime of (name of Class 1 misdemeanor).

Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at:

- (1) Confinement in jail for a specific time, but not more than twelve (12) months; or**
- (2) A fine of a specific amount, but not more than \$2,500; or**
- (3) Confinement in a jail for a specific time, but not more than twelve (12) months, and a fine of a specific amount, but not more than \$2,500.**

