Supreme Court of Tennessee

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M E M O R A N D U M
(7/12/2021)

This memorandum lists the instructions the Tennessee Pattern Jury Instruction Committee (Criminal) changed or created after the 24th edition of the book was published in 2020. The Administrative Office of the Courts' website includes Word "without comments and footnotes" versions of the instructions at issue. The "with comments and footnotes" version of newly-created and/or substantially revised instructions, are attached to the memorandum which appears on the AOC's website. If the committee changed a comment and/or footnote but did not change the text of an instruction, the instruction will be listed below but it will not be posted on the AOC's website.

1.00– Preliminary jury instructions

a) Add a new footnote after the lines "It is your job to determine what the facts are from the evidence. You must then apply the law in my instructions to the facts, and from that application you will arrive at a verdict." Those can be found at the end of the 2nd paragraph on Page 7 of the current book. Renumber subsequent footnotes accordingly.

b) The text of the new footnote should read as follows:

> *State v. Black*, 815 S.W.2d 166, 185-187 (Tenn. 1991). *See also Scott v. State*, 338 S.W.2d 581, 584 (Tenn. 1960), *overruled on other grounds by State v. Collier*, 411 S.W.3d 886 (Tenn. 2013).

1.08 – Jury: Judges of facts and law

a) Add the following language to the beginning of existing footnote 1:

> *State v. Black*, 815 S.W.2d 166, 185-187 (Tenn. 1991). *See also Scott v. State*, 338 S.W.2d 581, 584 (Tenn. 1960), *overruled on other grounds by State v. Collier*, 411 S.W.3d 886 (Tenn. 2013).

3.02 – Facilitation of a felony

a) Add the following at the end of existing Comment One:

> There shall be no release eligibility for a person committing facilitation of rape of a child on or after July 1, 2021, until the person has served one hundred percent (100%) of the sentence

imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236 or any other law shall operate to reduce the mandatory minimum sentence imposed by the court by more than fifteen percent (15%). T.C.A. § 40-35-501(z).

4.01 – Criminal attempt (other than attempted first degree murder with serious bodily injury)

a) Add the following to the end of Comment One:

For offenses committed on or after 7/1/21, a defendant convicted of attempt to commit any offense listed in T.C.A. § 40-35-501(aa)(2) shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn. Tenn. Code Ann. § 40-35-501(aa).

4.01(a) – Criminal Attempt to wit: First degree murder where the victim suffers serious bodily injury

a) Amend the title of the instruction to read as follows:

Criminal Attempt, to wit: First Degree Murder Where the Victim *[Suffers Serious Bodily Injury] [Was a _____ Who Was Engaged in the Performance of Official Duties]*

b) Amend element 3 to read as follows:

[(3)(a) that the alleged victim suffered serious bodily injury;]

and/or

[(3)(b) **only for offenses committed on or after 7/1/21**: that the alleged victim was a *[law enforcement officer] [correctional officer] [department of correction employee] [probation and parole officer] [emergency medical or rescue worker] [emergency medical technician] [paramedic] [firefighter]* who was engaged in the performance of official duties, and the defendant knew or reasonably should have known that the victim was a *[law enforcement officer] [correctional officer] [department of correction employee] [probation and parole officer] [emergency medical or rescue worker] [emergency medical technician] [paramedic] [firefighter]* engaged in the performance of official duties.

"Knew" and "known" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.]

c) Insert a footnote after the "and/or" phrase between elements (3)(a) and (3)(b) and renumber any subsequent footnotes accordingly. The text of the footnote should read as follows:

If both "suffers serious bodily injury" and "was a [certain occupation] engaged in the performance of official duties" are charged in the same single count of the indictment, the trial judge should draft a verdict form for the jury to use which clearly shows that the jury made a separate finding of guilt or acquittal as to each of these separate facts, to insure they reached a unanimous verdict as to each.

d) Insert a footnote at the end of the second paragraph of new element 3(b) and renumber any subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

e) Insert the following definition after the paragraph that begins *"[*"*Intended*"*]…."*:

["Law enforcement officer" means an officer, employee or agent of government who has a duty imposed by law to:

(A) maintain public order;

or

(B) make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses;

and

(C) investigate the commission or suspected commission of offenses.]

f) Insert a footnote after the new definition of "law enforcement officer" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

g) Add the following at the end of existing Comment One:

Criminal Attempt, to wit: First Degree Murder where the victim was of a certain occupation who was engaged in the performance of official duties is also a Class A felony, but in addition to being able to be sentenced within the proper Class A felony range, the trial judge also has the option of sentencing the defendant to imprisonment for life without possibility of parole. T.C.A. § 39-13-202(d).

4.02 – Solicitation

a) Add the following to the end of Comment One:

For offenses committed on or after 7/1/21, a defendant convicted of solicitation to commit any offense listed in T.C.A. § 40-35-501(aa)(2) shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn.Tenn. Code Ann. § 40-35-501(aa).

4.03 – Criminal conspiracy

a) Add the following to the end of Comment One:

For offenses committed on or after 7/1/21, a defendant convicted of conspiracy to commit any offense listed in T.C.A. § 40-35-501(aa)(2) shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn. Tenn. Code Ann. § 40-35-501(aa).

6.01 – Assault

a) Add the following language as a new paragraph to the end of existing Comment 1:

For offenses committed on or after 7/1/20, 2020 Public Chapter 756 amended the Assault statute to state that "in addition to any other punishment that may be imposed, if the relationship between the defendant and the victim of the assault is such that the victim is a domestic abuse victim as defined in § 36-3-601, and if, as determined by the court, the defendant possesses the ability to pay a fine in an amount not in excess of two hundred dollars ($200), then the court shall impose a fine at the level of the defendant's ability to pay, but no less than one hundred dollars ($100) and not in excess of two hundred dollars ($200)." In the opinion of the Committee, this additional fine, to be assessed by the trial judge without an additional finding of fact made by the jury, is unconstitutional pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Blakely v. Washington*, 542 U.S. 296 (2004) and *United States v. Booker*, 543 U.S. 220 (2005).

6.02(a) – Aggravated Assault (For offenses committed on or after 7/1/13)

a) Amend the definition of "motor vehicle" to read as follows:

> ["Motor vehicle" means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices**]**, and every vehicle that is propelled by electric power obtained from overhead trolley wires. "Motor vehicle" means any low speed vehicle or medium speed vehicle. "Motor vehicle" means any mobile home or house trailer as defined in § 55-1-105.]

b) Add a footnote in the above definition after the term "low speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

> T.C.A. § 55-1-122.

c) Add a footnote in the above definition after the term "medium speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

> T.C.A. § 55-1-125.

6.02(b) - [Aggravated] Assault Against a *[First Responder] [Nurse]*

a) Insert attachment one to this memorandum as new instruction 6.02(b).

6.03 Reckless endangerment

a) Amend element 3 to read as follows:

> (3)(a) that the offense was committed with a deadly weapon.]

b) Rename element 4 as (3)(b). Replace the "[and" with "[or" before the renamed element (3)(b).

c) Add the following as new element 3(c):

> [and
>
> (3)(c) **Only for offenses committed on or after 7/1/21**: that the defendant discharged a firearm from within a motor vehicle.]

d) Add the following definition after the definition of "["Habitation" ":

> ["Motor vehicle" means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, **[Only for offenses committed on or after July 1, 2020**: personal delivery devices**]**, and every vehicle that is propelled by electric power obtained from overhead trolley wires. "Motor vehicle" means any low speed vehicle or medium speed vehicle. "Motor vehicle" means any mobile home or house trailer as defined in § 55-1-105.]

e) Add a footnote in the above definition after the term "low speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

> T.C.A. § 55-1-122.

f) Add a footnote in the above definition after the term "medium speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

> T.C.A. § 55-1-125.

g) Add a footnote after the closing bracket of the new definition of "motor vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 55-1-103.

h) Add the following immediately before the last sentence of Comment One:

Reckless endangerment by discharging a firearm from within a motor vehicle is a Class C felony. T.C.A. § 39-13-103(4).

6.04 – Vehicular assault

a) Add the following definition directly before the paragraph containing the definition of "proximate result""

["Motor vehicle" means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, **[Only for offenses committed on or after July 1, 2020**: personal delivery devices**]**, and every vehicle that is propelled by electric power obtained from overhead trolley wires. "Motor vehicle" means any low speed vehicle or medium speed vehicle. "Motor vehicle" means any mobile home or house trailer as defined in § 55-1-105.]

b) Add a footnote in the above definition after the term "low speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 55-1-122.

c) Add a footnote in the above definition after the term "medium speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 55-1-125.

d) Add a footnote after the closing bracket of the new definition of "motor vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 55-1-103.

e) Amend element one to reads as follows:

that the defendant caused serious bodily injury to the alleged victim by the operation of a *[motor vehicle]* [**only for offenses committed on or after 7/1/21:** *vessel subject to registration]*;

6.04(a) – Vehicular *[assault] [homicide]*: Supplemental instruction number one

a) Add the following at the end of the second paragraph before the period:

*[***only for offenses committed on or after 7/1/21**: *boating under the influence]*.

6.05 – Aggravated vehicular assault

a) Amend Part A to read as follows:

that the defendant has two (2) or more prior convictions for *[driving under the influence of an intoxicant] [***Only for offenses committed on or after 7/1/21:** *boating under the influence of an intoxicant] [***Only for offenses committed prior to 7/1/19:** *violation of the habitual motor vehicle offender law] [or any combination of such offenses]*.

b) Amend Part C, Element 2 to read as follows:

> that the defendant has one (1) prior conviction for *[driving under the influence of an intoxicant]* *[***Only for offenses committed on or after 7/1/21:** *boating under the influence of an intoxicant]* *[***Only for offenses committed on or after 7/1/19:** *a violation of the habitual motor vehicle offender law]***.**]

6.08 – Domestic assault (for offenses committed on or after 4/10/08)

a) Amend the language of the first paragraph of Comment One to read as follows:

> Domestic assault is a Class A misdemeanor, unless the offense is committed under Part C, in which event assault is a Class B misdemeanor. T.C.A. §§ 39-13-111(c)(1) and 39-13-101(b). A third offense bodily injury domestic assault is an E felony if the defendant had a certain relationship with the victim. T.C.A. § 39-13-111(c). T.C.A. § 39-13-111(c)(5) allows the trial judge to assess an additional fee to fund family violence shelters and shelter services under certain circumstances of up to $225. In the opinion of the Committee, this additional fine, to be assessed by the trial judge without an additional finding of fact made by the jury, is unconstitutional pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Blakely v.Washington*, 542 U.S. 296 (2004) and *United States v. Booker*, 543 U.S. 220 (2005). For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, when the offense is a felony offense, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

6.09 – Violation of protective order

a) Add the following inside the bracket at the end of element 3, after adding at period at the end of the existing sentence:

> **If the violation is alleged to have occurred on or after 3/29/21 and the order was based on a conviction for a Title 39, chapter 13, part 1,2,3 or 5 offense for which the person seeking the order was the victim, the trial judge should insert that offense in the blank.**

7.03(a) – First degree murder (killing in the perpetration or attempted perpetration of an act of terrorism)

a) Insert attachment two to this memorandum as new instruction 7.03(a).

7.04(a) – First degree murder (fixing punishment of death or life imprisonment or life imprisonment without possibility of parole) (for offenses committed on or after July 1, 1995)

a) Add the following as a new statutory aggravating factor, to be numbered 19:

> [(19) The victim of the murder was acting as a Good Samaritan at the time of the murder and the defendant knew that the person was acting as a Good Samaritan. "Good Samaritan" means a person who helps, defends, protects, or renders emergency care to a person in need without compensation. **[Only for offenses committed on or after July 1, 2021.]**

b) Remove the first part of footnote 2 that states "Although T.C.A. § 39-13-204(e)(2) requires…" and replace it with the following, keeping the remaining part of the footnote the same:

Although prior to 7/1/21, T.C.A. § 39-13-204(e)(2) required…

c) The text immediately prior to the notation for footnote 23 should read as follows:

[See footnote 23 – only include statutory mitigators raised by the evidence.]

d) The text immediately prior to the notation for footnote 24 should read as follows:

*[*See footnote 24 when drafting nonstatutory mitigators*]*

7.04(b) – First degree murder (fixing punishment of life imprisonment or life imprisonment without the possibility of parole) (for offenses committed on or after July 1, 1985)

a) Add the following as a new statutory aggravating factor, to be numbered 19:

[(19) The victim of the murder was acting as a Good Samaritan at the time of the murder and the defendant knew that the person was acting as a Good Samaritan. "Good Samaritan" means a person who helps, defends, protects, or renders emergency care to a person in need without compensation. **[Only for offenses committed on or after July 1, 2021.]**

b) Remove the first part of footnote 2 that states "Although T.C.A. § 39-13-204(e)(2) requires…" and replace it with the following, keeping the remaining part of the footnote the same:

Although prior to 7/1/21, T.C.A. § 39-13-204(e)(2) required…

c) The text immediately prior to the notation for footnote 22 should read as follows:

[See footnote 22 – only include statutory mitigators raised by the evidence.]

d) The text immediately prior to the notation for footnote 23 should read as follows:

*[*See footnote 23 when drafting nonstatutory mitigators*]*

7.04(c) – First Degree Murder In The Perpetration Or Attempt To Perpetrate An Act Of Terrorism, (Fixing Punishment Of Death Or Life Imprisonment Without Possibility Of Parole)

a) Insert attachment three to this memorandum as new instruction 7.04(c). Renumber existing 7.04(c) as 7.04(d) and existing 7.04(d) and 7.04(e).

7.06 – Voluntary Manslaughter

a) Amend the definition of "motor vehicle" to read as follows:

["Motor vehicle" means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices**]**, and every vehicle that is propelled by electric power obtained from overhead trolley wires. "Motor vehicle" means any low speed vehicle or medium speed vehicle. "Motor vehicle" means any mobile home or house trailer as defined in § 55-1-105.]

b) Add a footnote in the above definition after the term "low speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 55-1-122.

c) Add a footnote in the above definition after the term "medium speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 55-1-125.

7.07 – Criminally negligent homicide

a) Amend the definition of "motor vehicle" to read as follows :

["Motor vehicle" means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices**]**, and every vehicle that is propelled by electric power obtained from overhead trolley wires. "Motor vehicle" means any low speed vehicle or medium speed vehicle. "Motor vehicle" means any mobile home or house trailer as defined in § 55-1-105.]

b) Add a footnote in the above definition after the term "low speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 55-1-122.

c) Add a footnote in the above definition after the term "medium speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 55-1-125.

7.08(a) – Vehicular homicide (reckless conduct)

a) Add the following as a new definition before the definition for "proximate result":

["Motor vehicle" means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding **[Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in § 55-8-301,**]** motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices,**] [Only for offenses committed on or after March 29, 2021:** motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. "Low-speed vehicle" means any four-wheeled electric vehicle, excluding golf carts, whose top speed is greater than twenty miles per hour (20 mph) but not greater than twenty-five miles per hour (25 mph), including neighborhood vehicles. "Medium-speed vehicle" means any four-wheeled electric or gasoline-powered vehicle, excluding golf carts, whose top speed is greater than thirty miles per hour (30 mph) but not more than thirty-five miles per hour (35 mph). "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. **[The words "or a medium-speed vehicle" and the definition of "medium-speed vehicle" only apply to offenses committed on or after 7/1/08.]**]

b) Replace the bracketed language in element one that currently reads *[motorboat]* with the following:

*[***only for offenses committed prior to 7/1/21:** *motorboat]* **[only for offenses committed on or after 7/1/21:** *vessel subject to registration under Title 69, chapter 9, part 2]*.

7.08(b) – Vehicular homicide (intoxication)

a) Add the following as a new definition before the definition for "recklessly":

["Motor vehicle" means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding **[Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in § 55-8-301,**]** motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices,**] [Only for offenses committed on or after March 29, 2021:** motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. "Low-speed vehicle" means any four-wheeled electric vehicle, excluding golf carts, whose top speed is greater than twenty miles per hour (20 mph) but not greater than twenty-five miles per hour (25 mph), including neighborhood vehicles. "Medium-speed vehicle" means any four-wheeled electric or gasoline-powered vehicle, excluding golf carts, whose top speed is greater than thirty miles per hour (30 mph) but not more than thirty-five miles per hour (35 mph). "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. **[The words "or a medium-speed vehicle" and the definition of "medium-speed vehicle" only apply to offenses committed on or after 7/1/08.]**]

b) Replace the bracketed language in element one that currently reads *[motorboat]* with the following:

*[***only for offenses committed prior to 7/1/21:** *motorboat] [***only for offenses committed on or after 7/1/21:** *vessel subject to registration under Title 69, chapter 9, part 2];*

c) Replace the language of element three with the following:

(3) that the killing was the proximate result of the *[driver's] [***only for offenses committed with a vessel as set forth in 69-9-217(a) on or after 7/1/21:** *operator's]* intoxication.

7.08(c) – Vehicular homicide (.08% alcohol concentration)

a) Add the following as a new definition before the definition for "proximate result":

["Motor vehicle" means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding **[Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in § 55-8-301,**]** motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices,**] [Only for offenses committed on or after March 29, 2021:** motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. "Low-speed vehicle" means any four-wheeled electric vehicle, excluding golf carts, whose top speed is greater than twenty miles per hour (20 mph) but not greater than twenty-five miles per hour (25 mph), including neighborhood vehicles. "Medium-speed vehicle" means any four-wheeled electric or gasoline-powered vehicle, excluding golf carts, whose top speed is greater than thirty miles per hour (30 mph) but not more than thirty-five miles per hour (35 mph). "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. **[The words "or a medium-speed vehicle" and the definition of "medium-speed vehicle" only apply to offenses committed on or after 7/1/08.]**]

b) Replace the bracketed language in element one that currently reads *[motorboat]* with the following:

*[***only for offenses committed prior to 7/1/21:** *motorboat] [***only for offenses committed on or after 7/1/21:** *vessel subject to registration under Title 69, chapter 9, part 2]*.

c) Replace the language of element three with the following:

(3) that the killing was the proximate result of the *[driver's] [***only for offenses committed with a vessel as set forth in 69-9-217(a) on or after 7/1/21:** *operator's]* intoxication.

7.08(d) – Vehicular homicide (drag racing)

a) Amend the first sentence of the paragraph containing the definition of "motor vehicle" to read as follows:

"Motor vehicle" means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding **[Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in § 55-8-301,**]** motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices,**] [Only for offenses committed on or after March 29, 2021:** motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

7.08(e) – Vehicular homicide (construction zone)

d) Add the following as a new definition before the definition for "proximate result":

["Motor vehicle" means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding **[Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in § 55-8-301,**]** motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices,**] [Only for offenses committed on or after March 29, 2021:** motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. "Low-speed vehicle" means any four-wheeled electric vehicle, excluding golf carts, whose top speed is greater than twenty miles per hour (20 mph) but not greater than twenty-five miles per hour (25 mph), including neighborhood vehicles. "Medium-speed vehicle" means any four-wheeled electric or gasoline-powered vehicle, excluding golf carts, whose top speed is greater than thirty miles per hour (30 mph) but not more than thirty-five miles per hour (35 mph). "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. **[The words "or a medium-speed vehicle" and the definition of "medium-speed vehicle" only apply to offenses committed on or after 7/1/08.]**]

e) Replace the bracketed language in element one that currently reads *[motorboat]* with the following:

*[***only for offenses committed prior to 7/1/21:** *motorboat]* ***[only for offenses committed on or after 7/1/21:*** *vessel subject to registration under Title 69, chapter 9, part 2]*.

7.09 – Reckless homicide

a) Amend the definition of "motor vehicle" to read as follows:

["Motor vehicle" means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices**]**, and every vehicle that is propelled by electric power obtained from overhead trolley wires. "Motor vehicle" means any low speed vehicle or medium speed vehicle. "Motor vehicle" means any mobile home or house trailer as defined in § 55-1-105.]

b) Add a footnote in the above definition after the term "low speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 55-1-122.

c) Add a footnote in the above definition after the term "medium speed vehicle" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 55-1-125.

7.11 – Aggravated vehicular homicide

a) Replace the existing language of Element A with the following:

that the defendant has two (2) or more prior convictions for driving under the influence of an intoxicant, **[only for offenses committed on or after 7/1/21:** boating under the influence,**]** vehicular assault or any combination of such offenses.

b) Replace the existing language of Element (C)(2) with the following:

that the defendant has one (1) prior conviction for driving under the influence of an intoxicant **[only for offenses committed on or after 7/1/21:**, boating under the influence,**]** or vehicular assault.

8.08(b) – Trafficking for commercial sex act

a) Add the following at the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.01 – Aggravated rape

a) Replace the existing language of element (2)(c)(2) with the following:

that the defendant knew, or had reason to know, that the alleged victim was *[mentally defective] [mentally incapacitated] [physically helpless] [***Only for offenses committed on or after 10/1/21:** *a vulnerable adult]*;

b) Add the following as a new definition paragraph after the definition paragraph for "Victim":

["Vulnerable adult" means a person eighteen (18) years of age or older who, because of intellectual disability, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others.]

c) Insert a footnote at the end of the new definition above and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-15-501, except that the statutory language "physical dysfunction" in that definition has been removed intentionally for this offense.

10.02 – Rape

a) Replace the existing language of element (2)(c) with the following:

that the defendant knew, or had reason to know, that the alleged victim was *[mentally defective] [mentally incapacitated] [physically helpless] [***Only for offenses committed on or after 10/1/21:** *a vulnerable adult]*;

b) Add the following as a new definition paragraph after the definition paragraph for "Victim":

["Vulnerable adult" means a person eighteen (18) years of age or older who, because of intellectual disability, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others.]

c) Insert a footnote at the end of the new definition above and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-15-501, except that the statutory language "physical dysfunction" in that definition has been removed intentionally for this offense.

d) Add the following at the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.03 – Aggravated sexual battery

a) Add the following at the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.04 – Sexual battery

a) Replace the existing language of element 2(b) with the following:

The sexual contact is accomplished without the consent of the victim and the defendant knew or had reason to know at the time of the contact that the victim did not consent. **[Only for offenses committed on or after 7/1/21:** The victim was incapable of consent if the sexual contact occurred during the course of a consultation, examination, ongoing treatment, therapy, or other provided professional service rendered by the defendant, whether licensed by the state or not, as a member of the clergy, healthcare professional, or alcohol and drug abuse counselor, and the defendant was treating the victim for a mental, emotional, or physical condition.**]**

b) Add the following at the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.04(a) – Sexual battery by an authority figure (for offenses committed on or after 7/1/06)

a) Add the following at the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.05(c) – Aggravated statutory rape (for offenses committed on or after July 1, 2006)

a) Add the following at the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.05(d) – Statutory rape by an authority figure

a) Add the following language to the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.08 – Promoting prostitution

a) Add the following at the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.08(a) – Promoting prostitution of a [minor] [person with an intellectual disability]

a) Add the following language to the end of existing Comment 1:

If committed on or after 3/20/20, promoting the prostitution of a minor as described in § 39-13-515(c)(1) is no longer an offense which qualifies for judicial diversion. T.C.A. § 40-35-313(a)(1)(B)(ii). For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.08(b) – Promoting travel for prostitution

a) Add the following language to the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.10 – Patronizing prostitution

a) Add the following language to the end of existing Comment 1:

> If committed on or after 3/20/20, patronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability, as described in§ 39-13-514(b)(3), is no longer an offense which qualifies for judicial diversion. T.C.A. § 40-35-313(a)(1)(B)(ii), and, for offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.12 – [Aggravated] rape of a child [Aggravated rape of a child effective for offenses committed on or after July 1, 2006]

a) Amend element (2)(c) to read as follows:

> that the alleged victim was eight (8) years of age or less **[for offenses committed prior to 7/1/20:** three (3) years of age or less**];**

b) Add the following at the end of the existing language of Comment One:

> If committed by a juvenile on or after 7/1/21, the juvenile's "sentence must be from within Range III." T.C.A. § 39-13-531(b)(1) and T.C.A. § 40-35-501(i)(2). There shall be no release eligibility for a person committing aggravated rape of a child or facilitation of rape of a child for offenses committed on or after July 1, 2021, until the person has served one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236 or any other law shall operate to reduce the mandatory minimum sentence imposed by the court by more than fifteen percent (15%). T.C.A. § 40-35-501.

10.15(b) – Public indecency (for offenses committed on or after 7/1/12)

a) Amend the third sentence of comment one to read as follows:

> Where the offense involves the defendant engaging in masturbation by self-stimulation, or the use of an inanimate object, on the property of any public school, private or parochial school, licensed day care center, or other child care facility, and the defendant knows or reasonably should know that a child or children are likely to be present on the property at the time of the conduct, the offense is a Class E felony, and, for offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.17 – Violation of sex offender residential or work restrictions (for offenses committed on or after August 17, 2009)

a) Amend the 2nd full paragraph after 2(n) to read as follows:

> [It is a defense to *[residing where a minor resides] [being alone with a minor] [**only for offenses committed on or after July 1, 2019**: conducting an overnight visit at a residence where a minor resided or was present]* if the defendant is a parent of the minor *[unless the offender's parental rights have been or were in the process of being terminated as provided by law] **[only for offenses committed on or after July 1, 2019:** unless the offender had been convicted of a sexual offense or violent sexual offense the victim of which was a child under twelve (12) years of age**]***

[unless any minor or adult child of the offender was a victim of [_____] committed by the offender] ***[only for offenses committed on or after July 1, 2020:*** *unless the offender has been convicted of _____, the victim of the sexual offense was a minor twelve years of age or less, and a circuit court, exercising its jurisdiction over civil matters, has found by clear and convincing evidence that the offender presents a danger of substantial harm to the minor.][Insert in this blank space a criminal offense or offenses listed in Tenn. Code Ann. § 40-39-202 under the definition of "Sex Offender" or "Violent Sex Offender." See Comment 2.]*]

b) Add a footnote to the new language that is added before the last bracketed sentence which begins …"[only for offenses committed on or after July 1, 2020….". Renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 40-39-211(c).

10.22 – Soliciting minors to engage in [certain conduct]

b) Add the following language to the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, when the offense is a felony offense, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.23 – Soliciting sexual exploitation of a minor

a) Add the following language to the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

10.24 – Continuous sexual abuse of a child

a) Add the following language to the end of existing Comment One:

If committed on or after 3/20/20, this offense is no longer an offense which qualifies for judicial diversion. T.C.A. § 40-35-313(a)(1)(B)(ii). For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

11.01 – Theft of property

a) In Comment one, replace subsections (A) and (B) with the following:

(A) A Class A misdemeanor if the value of the property or services obtained is $1.000 or less, except when the property obtained is a firearm obtained on or after 7/1/21;

(B) A Class E felony if the value of the property or services obtained is more than $1,000, but less than $2,500, or if the property is a firearm worth less than $2,500 obtained on or after 7/1/21;

b) Replace the last paragraph in Comment one with the following:

Theft of a firearm on or after 7/1/19 but prior to 7/1/21 shall be punished by confinement for not less than thirty (30) days in addition to any other penalty authorized by law. That minimum mandatory confinement is raised to 180 days for theft of a firearm committed on or after 7/1/21. T.C.A. § 39-14-105(d). Because of this mandatory minimum sentence, the trial judge must insure that any verdict form contains a unanimous jury finding that the property obtained included a firearm.

11.03(c) – Fixing aggregate value

a) Insert attachment four to this memorandum as a new instruction numbered 11.03(c).

11.03(d) – Fixing aggregate apparent value

a) Insert attachment five to this memorandum as a new instruction numbered 11.03(d).

11.08 – Organized retail crime

a) After the heading "Part A" add the phrase (Only for offenses committed prior to 7/1/20) in bold so that it reads as follows:

[Part A **(Only for offenses committed prior to 7/1/20)**:

b) After the heading "Part B" add the phrase (Only for offenses committed prior to 7/1/20) in bold so that it reads as follows:

[Part B **(Only for offenses committed prior to 7/1/20)**:

c) Add the following as new Part C. Before the new addition, add the word "or" centered. The new addition should read as follows:

or

[Part C **(Only for offenses committed on or after 7/1/20):**

(1) That the defendant acted in concert with one (1) or more individuals to commit theft of any merchandise with a value greater than one thousand dollars ($1,000) aggregated over a ninety-day period;

and

(2) (a) That the defendant did so with the intent to *[sell] [barter] [trade]* the merchandise for monetary or other gain;

or

(b) That the defendant did so with the intent to fraudulently return the merchandise to a retail merchant

or

(c) That the defendant *[received] [possessed] [sold] [purchased]* by physical or electronic means any *[merchandise] [stored value cards]* obtained from a fraudulent return with the knowledge that the property was obtained by *[theft] [theft of merchandise]*.

[and

(3) that the defendant exercised organizational, supervisory, financial or management authority over the activity of one (1) or more persons in furtherance of the offense.]

11.11 – Theft of mail

a) Insert attachment six to this memorandum as new instruction 11.11.

11.15 – Misrepresentation of mileage on used motor vehicle odometer/fraudulent alteration or removal of motor vehicle mileage notice plate

a) Amend Comment 3 to read as follows :

The term “motor vehicle” is defined in T.C.A. § 55-1-103.

12.04 – Cruelty to animals

a) Add the following language to the end of the existing Comment:

For offenses committed on or after July 1, 2020, in addition to any other penalty imposed, the court shall prohibit the defendant from having custody of any companion animal, as defined in § 39-14-212(b), for a period of at least two (2) years from the date of conviction and may impose a lifetime prohibition. The court shall prohibit any person convicted of a second or subsequent offense from having custody of any companion animal for the person's lifetime. T.C.A. § 39-14-203(c)(1). This prohibition was discretionary for offenses committed prior to that date.

12.04(a)- Aggravated cruelty to animals (for offenses committed on or after 7/1/ 2021)

a) Insert attachment seven to this memorandum as new instruction 12.04(a).

12.04(a) – Aggravated cruelty to animals

a) Renumber this instruction as 12.04(b).

b) Add the following at the end of the title:

(for offenses committed prior to 7/1/2021)

c) Add the following language to the end of existing Comment One:

For offenses committed on or after July 1, 2020, in addition to any other penalty imposed, the sentencing court shall order the defendant to surrender custody and forfeit all companion animals as defined in § 39-14-212(b)(2), and may award custody of the animals to the agency presenting the case. The court shall prohibit the defendant from having custody of companion animals for at least two (2) years from the date of conviction and may impose a lifetime prohibition. The court may also impose any other reasonable restrictions on the person's custody of other animals as is necessary for the protection of the animals. The court shall prohibit any person convicted of a second or subsequent offense from having custody of any companion animal for the person's lifetime. T.C.A. § 39-14-212(e).

12.10- Sexual activity with an animal

a) Add the following language to the end of existing Comment One:

The court shall prohibit the convicted person from having custody of any companion animal, as defined in § 39-14-212(b), for a period of at least two (2) years from the date of conviction and may impose a lifetime prohibition. The court shall prohibit any person convicted of a second or subsequent offense under this section from having custody of any companion animal for the person's lifetime. T.C.A. § 39-14-214(c).

13.01 – Arson

a) Amend Element One to read as follows:

> that the defendant knowingly damaged *[a structure] [a place of worship] [farm equipment]* by means of fire or explosion;

b) Add the following two new definitions in order after element 2(b) and before the definition for "Place of worship":

> "Farm equipment" means any farm tractor, farm implement designed to be operated with a farm tractor, and motorized farm machinery used in the commercial production of farm products or nursery stock.
>
> "Farm tractor" means every motor vehicle designed and used primarily as a farm implement, for drawing plows, mowing machines, and other implements of husbandry.

c) Add a footnote to the new definition for "Farm equipment" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

> T.C.A. § 39-14-301(c)(1).

d) Add a footnote to the new definition for "Farm tractor" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

> T.C.A. § 55-1-104(a).

e) Add a footnote to the existing definition for "Places of worship" and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

> T.C.A. § 39-14-301(c)(2).

14.01 – Burglary

a) Amend the text of footnote one to read as follows:

> T.C.A. § 39-14-402(a) [after 7/1/21, T.C.A. § 39-13-1002(a)].

b) Amend the text of footnote twelve to read as follows:

> T.C.A. § 39-14-402(a) [after 7/1/21, T.C.A. § 39-13-1002(a)].

c) Amend Comment One to read as follows:

> Burglary of a building other than a habitation is a Class D felony. T.C.A. § 39-14-402(c) [after 7/1/21, T.C.A. § 39-13-1002(c)]. Burglary of a vehicle is a Class E felony. T.C.A. § 39-14-402(d) [after 7/1/21, T.C.A. § 39-13-1002(d)].

14.02 – Aggravated burglary

a) Amend the text of footnote one to read as follows:

> T.C.A. § 39-14-403(a) [after 7/1/21, T.C.A. § 39-13-1003(a)].

b) Amend the text of footnote twelve to read as follows:

T.C.A. § 39-14-402(b) [after 7/1/21, T.C.A. § 39-13-1002(b)].

c) Amend the first sentence of Comment One to read as follows:

Aggravated burglary is a Class C felony. T.C.A. § 39-14-403(b) [after 7/1/21, T.C.A. § 39-13-1003(b)].

14.03 – Especially aggravated burglary

a) Amend the text of footnote one to read as follows:

T.C.A. § 39-14-404(a) [after 7/1/21, T.C.A. § 39-13-1004(a)].

b) Amend the text of footnote twelve to read as follows:

T.C.A. § 39-14-402(b) [after 7/1/21, T.C.A. § 39-13-1002(b)].

c) Amend the text of footnote seventeen to read as follows:

T.C.A. § 39-14-404(b) [after 7/1/21, T.C.A. § 39-13-1004(b)].

d) Amend the first sentence of Comment One to read as follows:

Especially aggravated burglary is a Class B felony. T.C.A. § 39-14-404(c) [after 7/1/21, T.C.A. § 39-13-1004(c)].

e) Amend the citation at the end of Comment three to read as follows:

T.C.A. § 39-14-404(d) [after 7/1/21, T.C.A. § 39-13-1004(d).

14.09 – Critical infrastructure vandalism

a) Change element one as follows:

(1)(a) that the defendant *[destroyed] [injured] [interrupted] [interfered with]* critical infrastructure or its operation;

or

(1)(b) **only for offenses committed on or after 7/1/21:** that the defendant *[destroyed] [injured]* a farm;

b) Add the following definition before the paragraph that begins with " "Knowingly" means…":

["Farm" means the land, buildings, and machinery used in the commercial production of farm products and nursery stock, and includes the real property, vehicles, equipment, machinery, animals or crops contained on a farm. "Nursery stock" means all trees, shrubs, or other perennial plants or parts of such trees, shrubs, or other perennial plants grown or kept for, or capable of, propagation, distribution or sale on a commercial basis.]

c) Add a footnote at the end of the new "farm" definition. Renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-14-411(b), § 43-26-102 and § 70-8-303(8).

d) Add brackets around the definition of "Critical infrastructure" beginning with the sentence that begins " "Critical infrastructure" includes…. " and ending at "… or under construction."

e) Amend the title of the instruction as follows:

Critical infrastructure vandalism [of a farm]

20.01 – Incest

a) Add the following language to the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

21.01 – Aggravated child [abuse] [neglect] (for offenses on or after 7/1/09)

a) Add the following language to the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

21.02 – Child [abuse] [neglect] (for offenses committed on or after July 1, 2005)

a) Add a new Part C directly after Part B(2) and preceded by the word "or" centered. New Part C should read as follows:

[Part C: **only for offenses committed on or after 7/1/21:**

(1) that the defendant, by act or omission, engaged in conduct that placed a child in imminent danger of death, bodily injury or physical or mental impairment;
and
(2) that the defendant engaged in this conduct with criminal negligence.]
[and
(3) that the child was eight (8) years of age or less.]

[A person engages in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if the person's conduct related to the controlled substance *[methamphetamine] [here put any other controlled substance listed in chapter 17, part 4 of this title, except a Schedule VI controlled substance]*, exposes the child to the controlled substance and an analysis of a specimen of the child's blood, hair, fingernail, urine, or other bodily substance indicates the presence of *[methamphetamine] [the other controlled substance]* in the child's body.][fn]]

b) Add a footnote at the end of the new Part C between the two closing brackets and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-15-401(d)(2).

c) Add the following new definition paragraph before the definition paragraph for "Knowingly".

["Criminal negligence" refers to a person who acts with criminal negligence with respect to the circumstances surrounding that person's conduct or the result of that conduct when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.]

d) Add a footnote at the end of the new definition and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-302(d).

e) Add the following language to the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

21.09 – Enticing a child to purchase alcoholic beverages – purchasing alcoholic beverages for a child

a) Amend the first sentence of Comment One to read as follows:

A violation of this offense is a Class A misdemeanor (with a mandatory minimum fine of at least $1,000, if committed on or after 7/1/21) and in addition, the offender shall be sentenced to one hundred (100) hours of community service work.

b) Add the following citation at the end of Comment One:

T.C.A. § 39-15-404(d).

23.01 – Contraband in penal institutions

a) Amend Element One of Part B to read as follows:

(1) that the defendant possessed *any [weapon] [ammunition] [explosives] [intoxicants] [legend drugs] [controlled substance] [**only for offenses committed on or after 5/15/12:** controlled substance analogue] [**only for offenses committed on or after 7/1/21:** telecommunication device]* while present in any penal institution where prisoners are quartered or under custodial supervision;

27.05(a)- Evading arrest

a) Add the following as a new element 3:

[and

(3) **Only for offenses committed on or after 7/1/21:** that the act resulted in *[serious bodily injury] [death]* to a law enforcement officer.]

b) Add the following language to the end of the existing Comment:

For offenses occurring on or after 7/1/20, the court shall order a person who commits evading arrest and, in doing so, recklessly damages government property, including, but not limited to, a

law enforcement officer's uniform or motor vehicle, to pay restitution to the appropriate government agency for the value of any property damaged. T.C.A. § 39-16-603(c). For offenses occurring on or after 7/1/21, if the jury finds a law enforcement officer was seriously injured, this offense is a Class C felony. If they find a law enforcement officer was killed, it is a Class A felony. T.C.A. § 39–16-603(d).

27.05(b) – Evading arrest while operating motor vehicle

a) Add the following as a new element 6:

[and

(6) **Only for offenses committed on or after 7/1/21:** that the act resulted in *[serious bodily injury] [death]* to a law enforcement officer.]

a) Add the following language to the end of the existing Comment:

For offenses occurring on or after 7/1/20, the court shall order a person who commits evading arrest and, in doing so, recklessly damages government property, including, but not limited to, a law enforcement officer's uniform or motor vehicle, to pay restitution to the appropriate government agency for the value of any property damaged. T.C.A. § 39-16-603(c). For offenses occurring on or after 7/1/21, if the jury finds a law enforcement officer was seriously injured, this offense is a Class C felony. If they find a law enforcement officer was killed, it is a Class A felony. T.C.A. § 39–16-603(d).

29.14(b) – Financial exploitation of [an elderly] [a vulnerable] adult (for offenses committed on or after 7/1/17)

a) Replace the existing definition paragraph for "caregiver" with the following:

[**Only for offenses committed prior to 10/1/21:** "Caregiver" means a relative or a person who has a legal duty to provide care, or who has assumed such duty by contract or conduct that a reasonable person would interpret as an assumption of the responsibility for *[an elderly] [a vulnerable]* adult's care, "Caregiver does not include a financial institution as a caregiver of property, funds, or other assets unless the financial institution has entered into an agreement, or has been appointed by a court of competent jurisdiction, to act as a trustee with regard to the property of the adult.**]**

or

[Only for offenses committed on or after 10/1/21: "Caregiver" means a relative or person who has a legal duty to provide care for *[an elderly] [a vulnerable]* adult, whether such duty arises by the relative or person's claim or conduct, contract, or in any other fashion; or a person who is married to or in a dating, romantic, or sexual relationship with someone who qualifies as a caregiver under that definition, and resides with or has regular contact with the elderly or vulnerable adult.**]**

b) Amend part C of the definition of "financial exploitation" to read as follows:

(C) The act of obtaining or exercising control over *[an elderly] [a vulnerable]* adult's property, **[only for offenses committed on or after 1/1/20:** without receiving the *[elderly] [vulnerable]* adult's effective consent,**]** by a caregiver **[only for offenses committed on or after 10/1/21:** or accomplice] committed with the intent to benefit the caregiver or other third party;]

c) Replace the existing definition paragraph for "relative" with the following:

"Relative" means a **[only for offenses committed on or after 10/1/21:** current or former**]** spouse; child, including stepchild, adopted child, or foster child; parent, including stepparent, adoptive parent, or foster parent; sibling of the whole or half-blood; step-sibling;

grandparent, of any degree; grandchild, of any degree; and aunt, uncle, niece, and nephew, of any degree, who resides with or has frequent or prolonged contact with the elderly or vulnerable adult; and knows or reasonably should know that the elderly or vulnerable adult is unable to adequately provide for the adult's own care or financial resources.

29.15 – Aggravated neglect of [an elderly] [a vulnerable] adult

a) Replace the existing definition paragraph for "caregiver" with the following:

[**Only for offenses committed prior to 10/1/21:** "Caregiver" means a relative or a person who has a legal duty to provide care, or who has assumed such duty by contract or conduct that a reasonable person would interpret as an assumption of the responsibility for *[an elderly] [a vulnerable]* adult's care, "Caregiver does not include a financial institution as a caregiver of property, funds, or other assets unless the financial institution has entered into an agreement, or has been appointed by a court of competent jurisdiction, to act as a trustee with regard to the property of the adult.**]**

or

[Only for offenses committed on or after 10/1/21: "Caregiver" means a relative or person who has a legal duty to provide care for *[an elderly] [a vulnerable]* adult, whether such duty arises by the relative or person's claim or conduct, contract, or in any other fashion; or a person who is married to or in a dating, romantic, or sexual relationship with someone who qualifies as a caregiver under that definition, and resides with or has regular contact with the elderly or vulnerable adult.**]**

b) Amend part C of the definition of "financial exploitation" to read as follows:

(C) The act of obtaining or exercising control over *[an elderly] [a vulnerable]* adult's property, **[only for offenses committed on or after 1/1/20:** without receiving the *[elderly] [vulnerable]* adult's effective consent,**]** by a caregiver **[only for offenses committed on or after 10/1/21:** or accomplice] committed with the intent to benefit the caregiver or other third party;]

c) Replace the existing definition paragraph for "relative" with the following:

"Relative" means a **[only for offenses committed on or after 10/1/21:** current or former**]** spouse; child, including stepchild, adopted child, or foster child; parent, including stepparent, adoptive parent, or foster parent; sibling of the whole or half-blood; step-sibling; grandparent, of any degree; grandchild, of any degree; and aunt, uncle, niece, and nephew, of any degree, who resides with or has frequent or prolonged contact with the elderly or vulnerable adult; and knows or reasonably should know that the elderly or vulnerable adult is unable to adequately provide for the adult's own care or financial resources.

d) Amend the last sentence of the definition of "serious physical harm" to read as follows:

[Only for offenses committed prior to 10/1/21: "Physical harm" means physical pain or injury, regardless of gravity or duration.**]**

or

[Only for offenses committed on or after 10/1/21: "Physical harm" means an action, regardless of gravity or duration, that causes pain or injury; or would cause a reasonable person to suffer pain or injury.**]**

29.16 – Neglect of [an elderly] [a vulnerable] adult [other than due to abandonment or confinement alone without injury]

a) Replace the existing definition paragraph for "caregiver" with the following:

[**Only for offenses committed prior to 10/1/21:** "Caregiver" means a relative or a person who has a legal duty to provide care, or who has assumed such duty by contract or conduct that a reasonable person would interpret as an assumption of the responsibility for *[an elderly] [a vulnerable]* adult's care, "Caregiver does not include a financial institution as a caregiver of property, funds, or other assets unless the financial institution has entered into an agreement, or has been appointed by a court of competent jurisdiction, to act as a trustee with regard to the property of the adult.**]**

or

[Only for offenses committed on or after 10/1/21: "Caregiver" means a relative or person who has a legal duty to provide care for *[an elderly] [a vulnerable]* adult, whether such duty arises by the relative or person's claim or conduct, contract, or in any other fashion; or a person who is married to or in a dating, romantic, or sexual relationship with someone who qualifies as a caregiver under that definition, and resides with or has regular contact with the elderly or vulnerable adult.**]**

b) Amend part C of the definition of "financial exploitation" to read as follows:

(C) The act of obtaining or exercising control over *[an elderly] [a vulnerable]* adult's property, **[only for offenses committed on or after 1/1/20:** without receiving the *[elderly] [vulnerable]* adult's effective consent,**]** by a caregiver **[only for offenses committed on or after 10/1/21:** or accomplice] committed with the intent to benefit the caregiver or other third party;]

c) Replace the definition paragraph for ["Physical harm…." with the following:

[Only for offenses committed prior to 10/1/21: "Physical harm" means physical pain or injury, regardless of gravity or duration.**]**

or

[Only for offenses committed on or after 10/1/21: "Physical harm" means an action, regardless of gravity or duration, that causes pain or injury; or would cause a reasonable person to suffer pain or injury.**]**

d) Replace the existing definition paragraph for "relative" with the following:

"Relative" means a **[only for offenses committed on or after 10/1/21:** current or former**]** spouse; child, including stepchild, adopted child, or foster child; parent, including stepparent, adoptive parent, or foster parent; sibling of the whole or half-blood; step-sibling; grandparent, of any degree; grandchild, of any degree; and aunt, uncle, niece, and nephew, of any degree, who resides with or has frequent or prolonged contact with the elderly or vulnerable adult; and knows or reasonably should know that the elderly or vulnerable adult is unable to adequately provide for the adult's own care or financial resources.

29.17 – Neglect of [an elderly] [a vulnerable] adult [due to abandonment or confinement alone without injury]

a) Replace the existing definition paragraph for "caregiver" with the following:

[**Only for offenses committed prior to 10/1/21:** "Caregiver" means a relative or a person who has a legal duty to provide care, or who has assumed such duty by contract or conduct that a reasonable person would interpret as an assumption of the responsibility for *[an elderly] [a vulnerable]* adult's care, "Caregiver does not include a financial institution as a caregiver of property, funds, or other assets unless the financial institution has entered into an agreement, or

has been appointed by a court of competent jurisdiction, to act as a trustee with regard to the property of the adult.**]**

or

[Only for offenses committed on or after 10/1/21: "Caregiver" means a relative or person who has a legal duty to provide care for *[an elderly] [a vulnerable]* adult, whether such duty arises by the relative or person's claim or conduct, contract, or in any other fashion; or a person who is married to or in a dating, romantic, or sexual relationship with someone who qualifies as a caregiver under that definition, and resides with or has regular contact with the elderly or vulnerable adult.**]**

b) Amend part C of the definition of "financial exploitation" to read as follows:

(C) The act of obtaining or exercising control over *[an elderly] [a vulnerable]* adult's property, **[only for offenses committed on or after 1/1/20:** without receiving the *[elderly] [vulnerable]* adult's effective consent,**]** by a caregiver **[only for offenses committed on or after 10/1/21:** or accomplice] committed with the intent to benefit the caregiver or other third party;]

c) Replace the definition paragraph for ["Physical harm…." with the following:

[Only for offenses committed prior to 10/1/21: "Physical harm" means physical pain or injury, regardless of gravity or duration.**]**

or

[Only for offenses committed on or after 10/1/21: "Physical harm" means an action, regardless of gravity or duration, that causes pain or injury; or would cause a reasonable person to suffer pain or injury.**]**

d) Replace the existing definition paragraph for "relative" with the following:

"Relative" means a **[only for offenses committed on or after 10/1/21:** current or former**]** spouse; child, including stepchild, adopted child, or foster child; parent, including stepparent, adoptive parent, or foster parent; sibling of the whole or half-blood; step-sibling; grandparent, of any degree; grandchild, of any degree; and aunt, uncle, niece, and nephew, of any degree, who resides with or has frequent or prolonged contact with the elderly or vulnerable adult; and knows or reasonably should know that the elderly or vulnerable adult is unable to adequately provide for the adult's own care or financial resources.

29.18 – [Aggravated] Abuse of [an elderly] [a vulnerable] adult (for offenses committed on or after 1/1/20)

a) Amend the definition of "abuse" to read as follows:

Abuse means the infliction of physical harm.

b) Delete the last sentence of the definition of "serious physical harm".

c) Insert the following as a new definition paragraph before the definition paragraph for "serious bodily injury":

[Only for offenses committed prior to 10/1/21: "Physical harm" means physical pain or injury, regardless of gravity or duration.**]**

or

[Only for offenses committed on or after 10/1/21: "Physical harm" means an action, regardless of gravity or duration, that causes pain or injury; or would cause a reasonable person to suffer pain or injury.**]**

29.19 – Sexual exploitation of [an elderly] [a vulnerable] adult

a) Separate the definitions of [“Elderly adult” and “Sexual exploitation” into two separate paragraphs.

b) In the second sentence of the definition of “sexual exploitation”, replace the word “fondling” with the following:

> **[only for offenses committed prior to 10/1/21:** fondling**] [only for offenses committed on or after 10/1/21:** sexual contact];

c) Add the following new definition paragraph directly before the definition for “sexual exploitation”. The paragraph should read as follows:

> ["Sexual contact" means the intentional touching of the alleged victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the alleged victim's, the defendant's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.]

d) Add a footnote at the end of the new definition for “Sexual contact” and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

> T.C.A. § 39-13-501.

30.01 – Aggravated riot

a) Replace the language of Comment one with the following:

> Aggravated Riot is a Class E felony, and “the court shall include a mandatory minimum sentence of forty-five (45) days of incarceration. In any sentence imposed for a violation of this section, the court shall include an order of restitution for any injury, property damage, or loss incurred as a result of the offense.” T.C.A. § 39–17-303. For offenses committed on or after 7/1/21, the mandatory minimum sentence is increased to “sixty (60) days of incarceration if the defendant engages in the conduct described in two (2) or more of the circumstances listed in” Element Two. T.C.A. § 39–17-303(b)(2)(B). If imposing this 60 day minimum for that reason, the trial judge should make sure that the two or more circumstances found by the jury are listed in the indictment and the jury’s verdict form is returned in a way that insures unanimity as to each separate circumstance.

b) Amend element two to read as follows:

> (2)(a) that as a result of such riot, *[a person other than one (1) of the participants suffered bodily injury] [substantial property damage occurred*];
>
> or
>
> (b) **Only for offenses committed on or after 7/1/21:** that the defendant participated in the riot for compensation;
>
> or
>
> (c) **Only for offenses committed on or after 7/1/21:** that the defendant traveled from outside the state with intent to commit a criminal offense.

30.03 – Abuse of a corpse

a) Add a new Part D to the instruction. The text of Part D is as follows:

> [Part D: **only for offenses committed on or after 7/1/21:**

(1) that the defendant did engage in sexual contact with a corpse;
and
(2) that the defendant acted without legal privilege;
and
(2) that the defendant acted knowingly.]

b) Add a new definition paragraph after the definition paragraph for ["Ordinary person"…". The new paragraph should read as follows:

["Sexual contact" means the intentional touching of the alleged victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the alleged victim's, the defendant's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.]

c) Add a footnote at the end of the new definition paragraph and renumber subsequent paragraphs accordingly. The text of the new paragraph should be as follows:

T.C.A. § 39-13-501(6).

30.17(a) – Providing support or resources for terrorism (for offenses committed prior to 7/1/11)

a) Delete this instruction.

30.17(b) – Providing support or resources for terrorism (for offenses committed on or after 7/1/11)

a) Renumber this instruction as 30.17.

b) Add a footnote to the title of the instruction. Renumber subsequent footnotes accordingly. The text of the new footnote should read as follows:

This pattern instruction formerly contained the jury charge for the statutory version of this offense committed prior to July 1, 2011. To obtain that pattern instruction, see T.P.I. 30.17(a) (24th ed. 2020) or an earlier edition.

31.02 – Counterfeit controlled substance

a) Amend Part A, element (3) to read as follows:

that the substance was similar in color, shape, size, and markings or lack thereof, to [specify controlled substance], a Schedule [insert schedule number] substance;

b) Amend Part B, element (2) to read as follows:

that the defendant intended that such substance imitate in color, shape, size, and markings or lack thereof, the physical appearance of [specify controlled substance], a Schedule [insert schedule number] substance;

c) Amend Part C, element (3) to read as follows:

that the substance was similar in color, shape, size, and markings or lack thereof, to [specify controlled substance], a Schedule [insert schedule number] substance;

d) After Part C, element (4), add the following sentence as a new paragraph:

[_____] is a Schedule [____] controlled substance.

e) Add the following language after the existing text of footnote 5:

> For definitions of "administer" and "dispense", see T.C.A. § 39-17-402(a)(1) and T.C.A. § 39-17-402(a)(7), respectively.

31.12(a) – Supplemental instruction: Drug-free zone

a) Insert attachment eight to this memorandum as substantially amended instruction 31.12(a).

34.02 – Using minors to import, prepare, distribute, process or appear in obscene material or exhibition

a) Add the following language to the end of existing Comment One:

> For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

34.03 – Sexual exploitation of a minor (for offenses committed on or after 7/1/05)

a) Amend part (G) of the definition of "sexual activity" to read as follows:

> (G) [**Only for offenses committed on or after 5/11/21:** Exhibition of the breast, genitals, buttocks, anus, or pubic or rectal area of any minor that can be reasonably construed as being for the purpose of the sexual arousal or gratification of the defendant or another.]
>
> or
>
> [**Only for offenses committed prior to 5/11/21:** Lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.]

b) Add the following language to the end of existing Comment One:

> For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

34.04 – Aggravated sexual exploitation of a minor

a) Amend part (G) of the definition of "sexual activity" to read as follows:

> (G) [**Only for offenses committed on or after 5/11/21:** Exhibition of the breast, genitals, buttocks, anus, or pubic or rectal area of any minor that can be reasonably construed as being for the purpose of the sexual arousal or gratification of the defendant or another.]
>
> or
>
> [**Only for offenses committed prior to 5/11/21:** Lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.]

b) Add the following language to the end of existing Comment One:

> For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court

undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

34.05 – Especially aggravated sexual exploitation of a minor

a) Amend part (G) of the definition of "sexual activity" to read as follows:

(G) [**Only for offenses committed on or after 5/11/21:** Exhibition of the breast, genitals, buttocks, anus, or pubic or rectal area of any minor that can be reasonably construed as being for the purpose of the sexual arousal or gratification of the defendant or another.]

or

[**Only for offenses committed prior to 5/11/21:** Lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.]

b) Amend the text of footnote twelve to read as follows:

T.C.A. § 39-17-1002(8).

c) Add the following language to the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

36.02- Carrying weapons during judicial proceedings

a) Add the following language as a new paragraph at the end of the instruction:

[Only for offenses committed on or after 7/1/20: It is an exception to this offense that the defendant was in the actual discharge of official duties as *[an elected official of any county or municipality] [the county attorney of any county in the state]*, was authorized to carry a handgun pursuant to T.C.A. § 39-17-1351, and was not in the room in which judicial proceedings were in progress.]

b) Add a footnote to the new paragraph. The text of the footnote should read as follows:

T.C.A. § 39-17-1306(c)(4).

36.05 – Unlawful possession of a handgun by a convicted felon (for offenses committed on or after 7/1/08)

a) Replace Comment One with the following language:

Unlawful possession of a handgun by a convicted felon is a Class E felony. T.C.A. § 39-17-1307(c)(2). There shall be no release eligibility for a person committing this offense **on or after 7/1/21**, until the person has served eighty-five percent (85%) of the sentence imposed b the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below seventy percent (70%) the percentage of sentence imposed by the court such person must serve before becoming release eligible. T.C.A. § 40-35-501(y).

36.05(a) – Unlawful possession of a firearm by a convicted felon (for offenses on or after 7/1/08)

a) Replace the first sentence, including the citation at the end of the first sentence, of Comment One with the following language:

Unlawful possession of a firearm by a defendant with a prior felony conviction is a Class B felony if a crime of violence, an attempt to commit a crime of violence, or involved the use of a deadly weapon. It is a Class C felony if the prior conviction is a drug offense. T.C.A. § 39-17-1307(b). There shall be no release eligibility for a person committing this offense **on or after 7/1/21**, until the person has served eighty-five percent (85%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below seventy percent (70%) the percentage of sentence imposed by the court such person must serve before becoming release eligible. T.C.A. § 40-35-501(y).

36.06 – Unlawful possession of deadly weapon with intent to employ it in commission of or escape from offense (for offenses committed prior to 1/1/08)

a) Delete this instruction.

36.06(a) – Unlawful possession of a deadly weapon with intent to employ it during the [commission of] [attempt to commit] [escape from] an offense [for "non-dangerous offense" committed on or after 1/1/08]

36.06(b) – Unlawful possession of a deadly weapon other than a firearm with intent to employ it during the [commission of] [attempt to commit] [escape from] a dangerous offense [for offenses committed on or after 1/1/08]

36.06(c) – Unlawful [possession] [employment] of a [firearm] [antique firearm] [with intent to go armed] during the [commission of or attempt to commit] [flight or escape from the commission of or attempt to commit] a dangerous offense

a) Add a footnote to the title of these three instructions. Renumber subsequent footnotes accordingly. The text of the new footnote should read as follows:

This pattern instruction formerly contained the jury charge for the statutory version of this offense committed prior to 1/1/08. To obtain that pattern instruction, see T.P.I. 36.06 (24th ed. 2020) or an earlier edition.

36.08 – Carrying weapon with intent to go armed

a) Amend the first sentence of Comment Two to read as follows:

The trial court should refer to T.C.A. §§ 39-17-1307(e) and (g), 39-17-1308, 39-17-1315 and 39-17-1364 for defenses (39-11-203) and exceptions (39-11-202) to this offense.

38.01(a) – Driving under the influence [accompanied by a child] [resulting in serious bodily injury to a child] [resulting in the killing of a child] (for offenses committed prior to 1/1/11)

a) Delete this instruction

38.01(b) – Driving under the influence [accompanied by a child] [resulting in serious bodily injury to a child] [resulting in the killing of a child] (for offenses committed on or after 1/1/11 but prior to 7/1/13)

a) Renumber this instruction as 38.01(a).

b) Add a footnote to the title of the instruction. Renumber subsequent footnotes accordingly. The text of the new footnote should read as follows:

This pattern instruction formerly contained the jury charge for the statutory version of this offense committed prior to 1/1/11. To obtain that pattern instruction, see T.P.I. 38.01(a) (24th ed. 2020) or an earlier edition.

38.10 – Consuming/possessing open container of alcoholic beverage or beer while operating motor vehicle

a) Amend the first sentence of the paragraph containing the definition of "motor vehicle" to read as follows:

"Motor vehicle" means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding **[Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in § 55-8-301,**]** motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices,**] [Only for offenses committed on or after March 29, 2021:** motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

b) Amend the definition of "driver" to read as follows:

"Driver" means, for purposes of a conventionally operated vehicle, every person who drives or is in actual physical control of a vehicle and for purposes of and ADS-operated vehicle and when the context requires, the ADS when the ADS is engaged.

c) Amend the footnote to the definition of "driver" to read as follows:

T.C.A. § 55-8-101.

38.15 – Driving while license [cancelled] [suspended] [revoked]

a) Amend the first sentence of the paragraph containing the definition of "motor vehicle" to read as follows:

"Motor vehicle" means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding **[Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in § 55-8-301,**]** motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices,**] [Only for offenses committed on or after March 29, 2021:** motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

38.18 – Driving without license [in possession]

a) Amend the first sentence of the paragraph containing the definition of "motor vehicle" to read as follows:

"Motor vehicle" means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding **[Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in § 55-8-301,**]** motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices,**] [Only for offenses committed on or after March 29, 2021:** motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

38.19 – Violation of Financial responsibility law

a) Amend the first sentence of the paragraph containing the definition of "motor vehicle" to read as follows:

"Motor vehicle" means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding **[Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in § 55-8-301,**]** motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices,**] [Only for offenses committed on or after March 29, 2021:** motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

38.21 – Drag racing [resulting in serious bodily injury]

a) Amend the first sentence of the paragraph containing the definition of "motor vehicle" to read as follows:

"Motor vehicle" means every vehicle, including a low-speed vehicle or a medium-speed vehicle, that is self-propelled, excluding **[Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in § 55-8-301,**]** motorized bicycles, **[Only for offenses committed on or after July 1, 2020:** personal delivery devices,**] [Only for offenses committed on or after March 29, 2021:** motorized wheelchairs,] or any vehicle, including a low-speed vehicle or a medium-speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

b) Amend the first sentence of Comment One to read as follows:

Drag racing is a Class A misdemeanor. If committed prior to 7/1/21, it is a Class B misdemeanor.

38.22 – Boating under the influence

a) Replace element (2)(b) with the following language:

(b) that the alcohol concentration in the defendant's [*[blood or breath was eight-hundredths of one percent (.08%)] [**only for offenses committed on or after 7/1/21:** blood was twenty-hundredths of one percent (.20%)]* or more.

b) In Comment One, replace the second sentence with the following:

For offenses committed prior to 7/1/21, a first offense is punishable by a fine of not less than two hundred fifty dollars ($250) nor more than two thousand five hundred dollars ($2,500), and confinement for up to eleven (11) months and twenty-nine (29) days.

c) At the end of the existing language of Comment One, add the following as a new second paragraph:

For offenses committed on or after 7/1/21, a first offense is punishable by not less than forty-eight (48) consecutive hours nor more than eleven (11) months and twenty-nine (29) days. A conviction for the first offense with a blood alcohol concentration of twenty-hundredths of one percent (0.20%) or more, shall serve a minimum of seven (7) consecutive days rather than forty-eight (48) hours. A second offense is punishable by not less than forty-five (45) consecutive days nor more than eleven (11) months and twenty-nine (29) days, and as a condition of probation, the judge may order the defendant to participate in a substance abuse treatment program, which includes any aftercare recommended by the treatment program, licensed or certified by the department of mental health and substance abuse services, which includes a certified drug court or DUI court, if the person first completes a clinical substance abuse assessment conducted pursuant to§ 55-10-402(h) and serves at least twenty-five (25) days of the period of incarceration imposed in the county jail or workhouse. A third offense is punishable by not less than one hundred twenty (120) consecutive days nor more than eleven (11) months and twenty-nine (29) days, and as a condition of probation the judge may order the person to participate in a substance abuse treatment program, which includes any aftercare recommended by the treatment program, licensed or certified by the department of mental health and substance abuse services, which includes a certified drug court or DUI court, if the person first completes a clinical substance

abuse assessment conducted pursuant to§ 55-10-402(h); and serves at least sixty-five (65) days of the period of incarceration imposed in the county jail or workhouse. A fourth offense shall be sentenced as a felon to serve not less than one hundred fifty (150) consecutive days nor more than the maximum punishment authorized for the appropriate range of a Class E felony. A fifth offense, for which prior convictions for vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218 are to be included, shall be sentenced as a felon to serve not less than the minimum sentence of imprisonment established for a fourth offender, and not more than the maximum punishment authorized for the appropriate range of a Class D felony. A sixth or subsequent conviction, for which prior convictions for vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218 are to be included, is a Class C felony and shall be sentenced to serve no less than the minimum sentence of imprisonment established for a fourth offender, and not more than the maximum punishment authorized for the appropriate range of a Class C felony.

39.03 – Unlawful photographing in violation of privacy

a) Renumber this instruction as 39.03(b).

b) Change the title of this instruction to the following:

Unlawful photographing in violation of privacy (for offenses committed prior to 7/1/21)

39.03(a) – Unlawful photographing

a) Insert attachment 9 to this memorandum as new instruction 39.03(a).

39.07 – Observation without consent

a) Add the following language to the end of existing Comment One:

For offenses committed, conspired to commit, solicited, or attempted on or after 7/1/21, if the victim is under age 13, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

40.03 – Defense: Duress

a) Replace the language of Element One with the following:

the *[defendant] [a third person]* is threatened with harm which is present, imminent, impending and of such a nature as to induce a well-grounded apprehension of *[death or serious bodily injury][***only for offenses committed on or after 4/7/21:***or grave sexual abuse]* if the act is not done;

b) Add the following as a new definition paragraph after Element 4:

"Grave sexual abuse" means:
(A) Aggravated rape, pursuant to§ 39-13-502;
(B) Rape, pursuant to § 39-13-503;
(C) Rape of a child, pursuant to§ 39-13-522; or
(D) Aggravated rape of a child, pursuant to § 39-13-531.

c) Add a footnote at the end of the new definition paragraph and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. § 39-11-106.

d) Add the following quote as new Comment 3 to the instruction:

State v. Kavaris Lequan Kelso, No. M2018-00494-CCA-R3-CD, 2020 WL 2109530 (Tenn. Crim. App., Nashville, 5/4/20) provides as follows:

> Tennessee's courts have noted several times that duress is not a defense to homicide. *See, e.g., State v. Robinson*, 622 S.W.2d 62, 73 (Tenn. Crim App. 1980) (stating that the trial judge "would have been justified in instructing the jury that . . . duress is not a defense to the crime of homicide"); *Mallicoat v. State*, 539 S.W.2d 54, 56 (Tenn. Crim App. 1976) (discussing the inapplicability of duress as a defense to murder); *Leach v. State*, 42 S.W. 195, 197 (Tenn. 1897) (holding that if a defendant was threatened with death if he did not murder the victim, "it was his duty to spare [the victim]" and that he "could not with any degree of legal palliation elect a course absolutely safe to himself, and slay an innocent man, rather than take some risk to himself in an equal combat with a relentless companion").
>
> The Defendant urges this court to conclude that the duress defense is not per se inapplicable to homicide offenses. However, in order to establish duress, a defendant must demonstrate that "the desirability and urgency of avoiding the harm" outweighed, "according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing" the criminal offense committed. Tenn. Code Ann. § 39-11-504(a). The danger of death cannot reasonably outweigh the harm of causing a death; therefore, duress in a homicide case cannot be fairly raised by the proof, regardless of whether the Defendant was being threatened at the time he shot the victim.

40.06(a) Defense: Self-defense [repealed on May 22, 2007]

a) Delete this instruction.

40.06(b) – Defense: Self-Defense

a) Renumber this instruction as 40.06.

b) Add a footnote to the title of the instruction. Renumber subsequent footnotes accordingly. The text of the new footnote should read as follows:

> This pattern instruction formerly contained the jury charge for the statutory version of this defense prior to May 22, 2007. To obtain that pattern instruction, see T.P.I. 40.06(a) (24th ed. 2020) or an earlier edition.

c) Replace the first sentence of the third paragraph with the following:

> [If a defendant was in a place where he or she had a right to be, he or she would also have a right to *[threaten] [use]* force intended or likely to cause *[death] [serious bodily injury]* if the defendant had a reasonable belief that there was an imminent danger of *[death or serious bodily injury]*[**only for offenses committed on or after 4/7/21:** *or grave sexual abuse],* the danger creating the belief of imminent *[death or serious bodily injury]*[**only for offenses committed on or after 4/7/21:** *or grave sexual abuse]* was real, or honestly believed to be real at the time, and the belief of danger was founded upon reasonable grounds.

d) Replace the first part of the second sentence of the fourth paragraph with the following, and the rest of the sentence remaining the same after the ellipsis:

> Factors to consider in deciding whether there were reasonable grounds for the defendant to fear *[death or serious bodily injury][***only for offenses committed on or after 4/7/21:** *or grave sexual abuse]* from the *[deceased] [alleged victim]* include but are not limited to …

e) Replace the bold, bracketed sentences in paragraphs 2 and 3 with the following (keeping the unbolded language remaining the same):

> **[Remove this bracketed language if the trial court finds the defendant, for offenses committed prior to 7/1/21, was engaged in unlawful activity, or for offenses committed on or after 7/1/21, was engaged in conduct that would constitute a felony or Class A misdemeanor, after a hearing. See Comment Three:**

f) Add the following as a new definition paragraph after the definition paragraph for "Force":

> "Grave sexual abuse" means:
> (A) Aggravated rape, pursuant to§ 39-13-502;
> (B) Rape, pursuant to § 39-13-503;
> (C) Rape of a child, pursuant to§ 39-13-522; or
> (D) Aggravated rape of a child, pursuant to § 39-13-531.

g) Add a footnote at the end of the new definition paragraph and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

> T.C.A. § 39-11-106.

h) Replace the third exception to the presumption of a reasonable belief of imminent death, etc. with the following:

> (3) **See Comment 5:** the defendant was engaged in **[for offenses committed prior to 7/1/21:** *an unlawful activity***] [for offenses committed on or after 7/1/21:** *conduct that would constitute a felony of Class A misdemeanor***]**, or was using the *[residence] [business] [dwelling] [occupied vehicle]* to further an unlawful activity; or

i) Add the following as a second paragraph to Comment 2:

> In *State v. Benson*, 600 S.W.3d 896, 906-07 (Tenn. 2020), the Supreme Court, in reversing a Court of Criminal Appeals opinion that self-defense should have been charged by the trial judge, held as follows regarding whether self-defense has been fairly raised when the only proof was that a simple assault was met with deadly force:
>
> > Further, the defendant's position [merges] the ability to use force generally with the use of deadly force. This distinction is crucial to determining whether self-defense has been "fairly raised" in a murder case such as this. The bar is substantially higher for one trying to fairly raise the issue of the valid use of deadly force:
> >
> > > [Tenn. Code Ann. § 39-11-611](b)(2) Notwithstanding § 39-17-1322, a person who is not engaged in unlawful activity and is in a place where the person has a right to be has no duty to retreat before threatening or using *force intended or likely to cause death or serious bodily injury, if*:
> > > (A) The person has a reasonable belief that there is an imminent danger of death or serious bodily injury;
> > > (B) The danger creating the belief of imminent death or serious bodily injury is real, or honestly believed to be real at the time; and
> > > (C) The belief of danger is founded upon reasonable grounds.

> Tenn. Code Ann. § 39-11-611(b)(2) (emphasis added). At most, the defense proof fairly raised the issue of whether the defendant was justified in using *non-lethal* force to protect himself from the victim. The defendant here, however, is not attempting to justify a simple assault against the victim. Instead, he chose to respond to a punch in the nose by pulling out a gun and shooting a small, unarmed woman five times, including twice in the back. (Emphasis in original. Footnotes omitted).

j) Add the following as new Comment 5:

> For offenses committed on or after 7/1/21, if the defendant proves by clear and convincing evidence to the jury that the conduct that would constitute a felony or Class A misdemeanor or the use of the residence, business, dwelling or occupied vehicle was due to the defendant's status as a victim of human trafficking, the presumption of the defendant's reasonable belief of death, serious bodily injury or grave sexual abuse would still apply. See 2021 PC 115, Section 2. Please see also the T.P.I.–Crim. Committee's website at https://www.tncourts.gov/administration/judicial-resources/pattern-jury-instructions/updates-instructions for any changes made to exception (3) of this jury instruction (the residence, business, dwelling or occupied vehicle exception) through October of 2022.

42.29 – Considering *[Redacted] [Edited]* Evidence

a) Insert attachment 10 to this memorandum as new instruction 42.29.

T.P.I. – CRIM. 6.02(b)

[AGGRAVATED] ASSAULT AGAINST A *[FIRST RESPONDER] [NURSE]*

Any person who commits the offense of [aggravated] assault against a *[first responder] [nurse]* is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:[1]

(1)(a) that the defendant caused bodily injury to a *[first responder] [***Only for offenses committed on or after 7/1/21:** *nurse]*;

or

(b) that the defendant caused physical contact with a *[first responder] [***Only for offenses committed on or after 7/1/21:** *nurse]* and a reasonable person would regard the contact as extremely offensive or provocative, including, but not limited to, spitting, throwing, or otherwise transferring bodily fluids, bodily pathogens, or human waste onto the person of *a [first responder] [nurse]*;

and

(2) that at the time of the act, the *[first responder] [***Only for offenses committed on or after 7/1/21:** *nurse]* was attempting to discharge *[his] [her]* official duties;

and

(3) that the defendant acted knowingly.

[and

(4)(a) that the act resulted in *[serious bodily injury to] [the death of]* the *[first responder] [***Only for offenses committed on or after 7/1/21:** *nurse]*;

or

(b) that the act involved *[the use or display of a deadly weapon] [strangulation] [attempted strangulation]*.]

[The trial judge may wish to charge T.P.I – Crim. 4.01, Criminal Attempt, in appropriate fact situations.]

[["Bodily injury"] [“Injury”] includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty.][2]

["Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.][3]

[“First responder” means a firefighter, emergency services personnel, POST-certified law enforcement officer, or other person who responds to calls for emergency assistance from a 911 call; and includes capitol police officers, Tennessee highway patrol officers, Tennessee bureau of investigation agents, Tennessee wildlife resources agency officers, and park rangers employed by the division of parks and recreation in the department of environment and conservation.][4]

[“Law enforcement officer” means an officer, employee or agent of government who has a duty imposed by law to:

(A) Maintain public order;

or

(B) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses;

and

(C) Investigate the commission or suspected commission of offenses.][5]

[“Nurse” means a person who is licensed, registered, or certified under title 63, chapter 7.][6]

["Serious bodily injury" means bodily injury that involves a substantial risk of death; protracted unconsciousness; extreme physical pain; protracted or obvious disfigurement; or protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty.][7] ["Bodily injury" includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty.][8]

[“Strangulation” means intentionally or knowingly impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth of another person, regardless of whether that conduct results in any visible injury or whether the person has any intent to kill or protractedly injure the victim.][9]

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.[10]

The requirement of "knowingly" is also established if it is shown that the defendant acted intentionally.[11]

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.[12]

COMMENTS

1. Assault of a first responder or nurse is a Class A misdemeanor, and "shall be punished by a mandatory fine of five thousand dollars ($5,000) and a mandatory minimum sentence of thirty (30) days incarceration. The defendant is not eligible for release from confinement until the defendant has served the entire thirty-day mandatory minimum sentence." Aggravated assault of a first responder or nurse (resulting in serious bodily injury or death, or involving use or display of a deadly weapon, strangulation or attempted strangulation), is a Class C felony, and "is punished by a mandatory fine of fifteen thousand dollars ($15,000) and a mandatory minimum sentence of ninety (90) days incarceration. The defendant is not eligible for release from confinement until the defendant has served the entire ninety-day mandatory minimum sentence." T.C.A. § 39-13-116(c).

FOOTNOTES

1. T.C.A. § 39-13-116.

2. T.C.A. § 39-11-106.

3. T.C.A. § 39-11-106.

4. T.C.A. § 39-13-116(d).

5. T.C.A. § 39-11-106.

6. T.C.A. § 39-13-116(d).

7. T.C.A. § 39-11-106.

8. T.C.A. § 39-11-106.

9. T.C.A. § 39-13-102(a)(2).

10. T.C.A. § 39-11-106.

11. T.C.A. § 39-11-301(a)(2).

12. T.C.A. § 39-11-106.

T.P.I. – CRIM. 7.03(a)

FIRST DEGREE MURDER

(KILLING IN PERPETRATION OR ATTEMPTED PERPETRATION OF AN ACT OF TERRORISM)

Any person who commits first degree murder is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:[1]

(1) that the defendant *[, or one for whom the defendant is criminally responsible,]*[2] unlawfully killed the alleged victim;

and

(2) that the killing was committed in the perpetration of or the attempt[3] to perpetrate an alleged act of terrorism; that is, that the killing was closely connected to the alleged act of terrorism and was not a separate, distinct and independent event;

and

(3) that the defendant intended to commit the alleged act of terrorism.[4]

The essential elements of committing an act of terrorism are as follows:

(1) that the defendant committed *[* _____ *]*, a criminal offense;

and

(2) that the defendant intended by this act, directly or indirectly, to

(a) intimidate or coerce a civilian population;

or

(b) influence the policy of a unit of government by intimidation or coercion;

or

(c) affect the conduct of a unit of government by *[murder] [assassination] [torture] [kidnapping] [mass destruction];*

or

(d) serve as a premeditated, politically motivated act of violence, or violence in pursuit of religious, ideological, or social objectives, perpetrated against first responders, including law enforcement officers, correctional officers, department of correction employees, probation or parole officers, paramedics, firefighters, or other emergency medical rescue workers acting in their official capacity, which results in loss of life.

[The essential elements necessary to constitute *[_____]* are (here set out the essential elements).]

or

[The essential elements necessary to constitute *[_____]* have been previously set out in these instructions.]

The intent to commit the act or terrorism must exist prior to or concurrent with the commission of the act causing the death of the victim. Proof that such intent to commit the act or terrorism existed before, or concurrent with, the act of killing is a question of fact to be decided by the jury after consideration of all the facts and circumstances.

[Consideration of such factors as time, place and causation is helpful in determining whether a killing was committed in the perpetration of the alleged act or terrorism. The killing may precede, coincide with, or follow the act of terrorism and still be considered as occurring in the perpetration of the act of terrorism, so long as there is a connection in time, place and continuity of action.][5]

[When one enters into a scheme with another to commit an act of terrorism, and death ensues, *[both] [all]* defendants are responsible for the death regardless of who actually committed the killing and whether the killing was specifically contemplated by the other.][6]

["Coerce" means to make a threat, however communicated, to:

[(A) commit any offense;]

[(B) wrongfully accuse any person of any offense;]

[(C) expose any person to hatred, contempt or ridicule;]

[(D) harm the credit or business repute of any person;] or

[(E) take or withhold action as a public servant or cause a public servant to take or withhold action].][7]

[“Intimidate” means to use unlawful coercion, duress; to put in fear.][8]

“Intended” and "Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.[9]

[Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.][10]

[It is not a defense that the defendant felt justified in committing these acts for religious reasons.][11]

[If you find from the proof beyond a reasonable doubt that the defendant is guilty of murder in the first degree, then it shall be your duty after a separate sentencing hearing to determine whether the defendant will be sentenced to death or life imprisonment without the possibility of parole, but you will not consider punishment for this offense at this time.][12]

COMMENTS

1. A person convicted of murder in the first degree in perpetration or attempted perpetration of an act of terrorism shall be punished by death or by life without the possibility of parole. If the person was a juvenile at the time of commission of the offense, life imprisonment is also an available punishment. T.C.A. §39-13-202(c). For the instruction concerning sentencing an adult for this offense, see T.P.I. – Crim. 7.04(c), First degree murder in the perpetration or attempt to perpetrate an act of terrorism (fixing punishment of death or life imprisonment without possibility of parole). For the instruction concerning sentencing a juvenile for this offense, see T.P.I. – Crim. 7.04(b), First degree murder (fixing punishment of life imprisonment or life imprisonment without possibility of parole).

FOOTNOTES

1. T.C.A. § 39-13-202(a)(4) and T.C.A. § 39-13-803(1).

2. State v. Hinton, 42 S.W.3d 113, 119 (Tenn. Crim. App. 2000), perm. app. denied (Tenn. 2001).

3. The trial judge may wish to charge criminal attempt in appropriate fact situations. *See* T.P.I.–Crim. 4.01, Criminal attempt.

4. No culpable mental state is required for a conviction for this offense except the intent to commit the enumerated offenses or acts. T.C.A. § 39-13-202(b).

5. State v. Pierce, 23 S.W.3d 289, 295 (Tenn. 2000); State v. Buggs, 995 S.W.2d 102, 106-08 (Tenn. 1999).

6. State v. Hinton, 42 S,W,113, 119 (Tenn. Crim. App. 2000), perm. app. denied (Tenn. 2001).

7. T.C.A. § 39-11-106.

8. Black's Law Dictionary (8th Ed. 2004).

9. T.C.A. § 39-11-106.

10. T.C.A. § 39-13-214.

11. T.C.A. § 39-13-809.

12. T.C.A. § 39-13-202(c)(2).

T.P.I. – CRIM. 7.04(c)

FIRST DEGREE MURDER IN THE PERPETRATION OR ATTEMPT TO PERPETRATE AN ACT OF TERRORISM

(FIXING PUNISHMENT OF DEATH OR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE)

Members of the Jury, you have now found the defendant guilty beyond a reasonable doubt of murder in the first degree as charged in the _____ count of indictment number _____.

It is now your duty to determine, within the limits prescribed by law, the penalty which shall be imposed as punishment for this offense. Tennessee law provides that a person convicted of murder in the first degree in the perpetration or attempted perpetration of an act of terrorism shall be punished by death, or by imprisonment for life without possibility of parole.[1] A defendant who receives a sentence of imprisonment for life without parole shall never be eligible for release.

In arriving at this determination, you are authorized to weigh and consider any of the statutory aggravating circumstances proved beyond a reasonable doubt, and any mitigating circumstances which may have been raised by the evidence throughout the entire course of this trial, including the guilt-finding phase or sentencing phase or both. The jury is the sole judge of the facts, and of the law as it applies to the facts in the case. In arriving at your verdict, you are to consider the law in connection with the facts; but the Court is the proper source

from which you are to get the law. In other words, you are the judges of the law as well as the facts under the direction of the Court.

The burden of proof is upon the state to prove any statutory aggravating circumstance or circumstances beyond a reasonable doubt.

Reasonable doubt is that doubt created by an investigation of all the proof in the case and an inability, after such investigation, to let the mind rest easily as to the certainty of your verdict. Absolute certainty is not demanded by the law, but moral certainty is required, and this certainty is required as to every element of proof necessary to constitute the verdict.[2]

The law makes you, the jury, the sole and exclusive judges of the credibility of the witnesses and the weight to be given to the evidence.

[The prosecution has introduced what is known as victim impact evidence. This evidence has been introduced to show the financial, emotional, psychological, or physical effects of the victim's death on the members of the victim's immediate family. You may consider this evidence in determining an appropriate punishment. However, your consideration must be limited to a rational inquiry into the culpability of the defendant, not an emotional response to the evidence.

Victim impact evidence is not the same as an aggravating circumstance. Proof of an adverse impact on the victim's family is not proof of an aggravating circumstance. Introduction of this victim impact evidence in no way relieves the State of its burden to prove beyond a reasonable doubt at least one aggravating circumstance which has been alleged. [You may consider this victim impact

evidence in determining the appropriateness of the death penalty only if you first find that the existence of one or more aggravating circumstances has been proven beyond a reasonable doubt by evidence independent from the victim impact evidence, and find that the aggravating circumstance(s) found outweigh the finding of one or more mitigating circumstances beyond a reasonable doubt.][3]][4]

STATUTORY AGGRAVATING CIRCUMSTANCES

Tennessee law provides that no sentence of death shall be imposed by a jury but upon a unanimous finding that the state has proven beyond a reasonable doubt the existence of one (1) or more of the statutory aggravating circumstances, which shall be limited to the following:

[(1) The murder was committed against a person less than twelve (12) years of age and the defendant was eighteen (18) years of age or older.]

[(2) The defendant was previously convicted of one (1) or more felonies, other than the present charge, the statutory elements of which involve the use of violence to the person. [The state is relying upon the crime(s) of _____, the statutory elements of which involve the use of violence to the person.]][5]

[(3) The defendant knowingly created a great risk of death to two (2) or more persons, other than the victim murdered, during the act of murder.]

[(4) The defendant committed the murder for remuneration or the promise of remuneration, or employed another to commit the murder for remuneration or the promise of remuneration.]

[(5) The murder was especially heinous, atrocious, or cruel in that it involved torture or serious physical abuse beyond that necessary to produce death.]

[(6) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another.]

[(7) The murder was knowingly committed, solicited, directed, or aided by the defendant, while the defendant had a substantial role in committing or attempting to commit, or was fleeing after having a substantial role in committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, theft, kidnapping, aggravated child abuse, aggravated child neglect, rape of a child, aggravated rape of a child, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb.[6]

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.[7] The requirement

of "knowingly" is also established if it is shown that the defendant acted intentionally.[8] "Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.[9]]

[(8) The murder was committed by the defendant while *[he] [she]* was in lawful custody or in a place of lawful confinement or during the defendant's escape from lawful custody or from a place of lawful confinement.]

[(9) The murder was committed against any law enforcement officer, corrections official, corrections employee, probation and parole officer, emergency medical or rescue worker, emergency medical technician, paramedic or firefighter, who was engaged in performance of official duties, and the defendant knew or reasonably should have known that such victim was a law enforcement officer, corrections official, corrections employee, probation and parole officer, emergency medical or rescue worker, emergency medical technician, paramedic or firefighter, engaged in the performance of official duties.]

[(10) The murder was committed against any present or former judge, district attorney general or state attorney general, assistant district attorney general, or assistant state attorney general due to or

because of the exercise of the victim's official duty or status and the defendant knew that the victim occupied said office.]

[(11) The murder was committed against a national, state, or local popularly elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official.]

[(12) The defendant committed “mass murder” which is defined as the murder of three (3) or more persons whether committed during a single criminal episode or at different times within a forty-eight (48) month period.]

[(13) The defendant knowingly mutilated the body of the victim after death.]

[(14) The victim of the murder was seventy (70) years of age or older; or the victim of the murder was particularly vulnerable due to a significant disability, whether mental or physical, and at the time of the murder the defendant knew or reasonably should have known of such disability.]

[(15) The murder was committed in the course of an act of terrorism.]

[(16) The murder was committed against a pregnant woman, and the defendant intentionally killed the victim, knowing[10] that she was pregnant. A person acts intentionally when it is the person’s conscious objective or desire to cause the death of the alleged victim.[11]]

[(17) The murder was committed at random and the reasons for the killing are not obvious or easily understood.]

[(18) The defendant knowingly sold or distributed a substance containing *[fentanyl] [carfentanil] [insert here any other opiate listed in § 39-17-408(c)]* with the intent and premeditation to commit murder.]

[(19) The victim of the murder was acting as a Good Samaritan at the time of the murder and the defendant knew that the person was acting as a Good Samaritan. "Good Samaritan" means a person who helps, defends, protects, or renders emergency care to a person in need without compensation.

You are instructed that the word:

"HEINOUS" means grossly wicked or reprehensible, abominable; odious; vile.

"ATROCIOUS" means extremely evil or cruel; monstrous; exceptionally bad; abominable.

"CRUEL" means disposed to inflict pain or suffering; causing suffering; painful.

"TORTURE" means the infliction of severe physical or mental pain upon the victim while he or she remains alive and conscious.][12]

Members of the Jury, the court has read to you the aggravating circumstances which the law requires you to consider if you find proved beyond a reasonable doubt. You shall not consider any other facts or circumstances as an

aggravating circumstance in deciding whether the death penalty would be appropriate punishment in this case.

MITIGATING CIRCUMSTANCES

Tennessee law provides that in arriving at the punishment, the jury shall consider as previously indicated, any mitigating circumstances raised by the evidence which shall include, but are not limited to, the following:

[See footnote 13 - only include statutory mitigators raised by the evidence.][13]

[(1) The defendant has no significant history of prior criminal activity. (Conviction of the crime of _____ is not an aggravating circumstance to be considered in determining the penalty, but a conviction of that crime may be considered in determining whether or not the defendant has a significant history of prior criminal activity.)]

[(2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.]

[(3) The victim was a participant in the defendant's conduct or consented to the act.]

[(4) The murder was committed under circumstances which the defendant reasonably believed to provide a moral justification for the defendant's conduct.]

[(5) The defendant was an accomplice in the murder committed by another person and the defendant's participation was relatively minor.]

[(6) The defendant acted under extreme duress or under the substantial domination of another person.]

[(7) The youth or advanced age of the defendant at the time of the crime.]

[(8) The capacity of the defendant to appreciate the wrongful.ness of *[his] [her]* conduct or to conform *[his] [her]* conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication which was insufficient to establish a defense to the crime but which substantially affected *[his] [her]* judgment.]

(9) [See footnote 14 when drafting nonstatutory mitigators.][14]

(10) Any other mitigating factor which is raised by the evidence produced by either the prosecution or defense at either the guilt or sentencing hearing; that is, you shall consider any aspect of the defendant's character or record, or any aspect of the circumstances of the offense favorable to the defendant which is supported by the evidence.[15]

The defendant does not have the burden of proving a mitigating circumstance. There is no requirement of jury unanimity as to any particular mitigating circumstance, or that you agree on the same mitigating circumstance.

VERDICT - LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE

If you do not unanimously determine that a statutory aggravating circumstance has been proved by the state beyond a reasonable doubt, or if you unanimously determine that a statutory aggravating circumstance or circumstances have been proved by the state beyond a reasonable doubt but that said statutory aggravating circumstance or circumstances have not been proven by the state to outweigh any mitigating circumstances beyond a reasonable doubt the sentence shall be life imprisonment without possibility of parole. You will write your verdict upon the enclosed form attached hereto and made a part of this charge.

The verdict shall be as follows:

We, the jury, unanimously find that the punishment shall be life imprisonment without possibility of parole.

The verdict must be unanimous and signed by each juror.

VERDICT - DEATH

If you unanimously determine that at least one statutory aggravating circumstance or several statutory aggravating circumstances have been proven by the state, beyond a reasonable doubt, and said circumstance or circumstances have been proven by the state to outweigh any mitigating circumstance or circumstances, beyond a reasonable doubt the sentence shall be death. The jury shall reduce to writing the statutory aggravating circumstance or statutory aggravating circumstances so found, and signify that the state has proven beyond a reasonable doubt that the statutory aggravating circumstance or circumstances outweigh any mitigating circumstances.

You will write your findings and verdict upon the enclosed form attached hereto and made a part of this charge. Your verdict shall be as follows:

(1) We, the jury, unanimously find the following listed statutory aggravating circumstance or circumstances beyond a reasonable doubt;

(2) We, the jury, unanimously find that the state has proven beyond a reasonable doubt that the statutory aggravating circumstance or circumstances so listed above outweigh any mitigating circumstances.

(3) Therefore, we, the jury, unanimously find that the punishment shall be death.

The verdict must be unanimous and signed by each juror.

Take the case, consider all the evidence fairly and impartially, complete one of the two (2) forms, and report your verdict to the court.

JUDGE

DATE

PUNISHMENT OF LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE

We, the jury, unanimously determine that no statutory aggravating circumstance has been proven by the state beyond a reasonable doubt, or that any statutory aggravating circumstance or circumstances have not been proven by the state to outweigh any mitigating circumstances beyond a reasonable doubt. Therefore, we, the jury, unanimously find that the sentence shall be life imprisonment without possibility of parole

_____	_____
JURY FOREPERSON	JUROR
_____	_____
JUROR	JUROR
_____	_____
JUROR	JUROR
_____	_____
JUROR	JUROR
_____	_____
JUROR	JUROR
_____	_____
JUROR	JUROR

_____

DATE

PUNISHMENT OF DEATH

(1) We, the jury, unanimously find the following listed statutory aggravating circumstance or circumstances beyond a reasonable doubt:

(Here list the statutory aggravating circumstance or circumstances so found, which must be limited to those enumerated for your consideration by the court in these instructions.)

[_____]

[_____]

[_____]

[_____]

(2) We, the jury, unanimously find that the state has proven beyond a reasonable doubt that the statutory aggravating circumstance or circumstances so listed above outweigh any mitigating circumstances.

(3) Therefore, we, the jury, unanimously find that the punishment for the defendant, _____, shall be death.

_____	_____
JURY FOREPERSON	JUROR
_____	_____
JUROR	JUROR
_____	_____
JUROR	JUROR
_____	_____
JUROR	JUROR

_____	_____
JUROR	JUROR
_____	_____
JUROR	JUROR

_____
DATE

FOOTNOTES

1 T.C.A. § 39-13-202(c)(2).

2 State v. Hall, 976 S.W.2d 121, 170-171 (1998), cert denied, 526 U.S. 1089, 119 S.CT. 1501, 143 L.Ed.2d 654 (1999), as modified by State v. Rimmer, 250 S.W.3d 12 (Tenn. 2008).

3 The trial judge may wish to remove this language, as it is the opinion of the Committee that "a contradiction exists because the statute provides that the jury shall return a verdict of death upon finding the existence of an aggravating circumstance beyond a reasonable doubt, while the Nesbit instruction allows the jury to consider victim impact evidence only after it has found that at least one aggravating circumstance exists, and that the aggravating circumstance outweighs the mitigating circumstances beyond a reasonable doubt." State v. Reid, 91 S.W.3d 247, 283 (Tenn. 2002).

4 The Tennessee Supreme Court has held that this "instruction should be used in substance in all future capital murder trials where impact evidence has been introduced" in State v. Nesbit, 978 S.W.2d 872 (Tenn. 1998), cert denied 978 U.S. 872, 119 S.Ct. 1359, 143 L. Ed. 2d 520 (1999), which sets out guidelines for the use of such evidence. *See also* Tenn. Code Ann. § 39-13-204(c) (Supp. 1998) for statutory authority allowing victim impact evidence, effective July 1, 1998.

5 If the felony is one which can be committed with differing statutory elements, some involving violence and some not (such as robbery or aggravated assault), the trial judge may have to have a hearing pre-trial to determine whether this language or felony can be included. "'In determining whether the statutory elements of a prior felony conviction involve the use of violence against the person for purposes of § 39-13-201(i)(2), we hold that the trial judge must necessarily examine the facts underlying the prior felony if the

statutory elements of that felony may be satisfied either with or without proof of violence." State v. Sims, 45 S.W.3d 1, 11-12 (Tenn. 2001), cited with a constitutional analysis of this instruction in relation to *Apprendi*, *Ring* and *Blakely* in State v. Cole, 155 S.W.3d 885, 899-905 (Tenn. 2005). In Shepard v. United States, 125 S.Ct. 1254 (2005), the United States Supreme Court limited the scope of the judge's inquiry in a *Sims* type hearing to "reliable judicial records" regarding the prior conviction and precluded the judge from re-examining the facts underlying the conviction. The Tennessee Supreme Court discussed this in State v. Rice, 184 S.W.3d 646, 667-69 (Tenn. 2006). It is suggested that prior to the *Sims* hearing the trial judge read this discussion in *Rice* to determine which "reliable judicial records" the judge may permissibly consider in order to avoid any violation of the defendant's right to a trial by jury on this issue.

6 See T.C.A. § 39-11-106 for an appropriate definition of "destructive device".

7 T.C.A. § 39-11-106.

8 T.C.A. § 39-11-301(a)(2).

9 T.C.A. § 39-11-106.

10 The Committee is of the opinion that the usual definition of "knowingly" as set out in T.C.A. § 39-11-106 should not be included in this aggravating circumstance as "the context requires otherwise." T.C.A. § 39-11-106. Although this aggravating circumstance requires that the defendant must be aware that the circumstances of pregnancy exists, the defendant must act intentionally, not knowingly.

11 State v. Page, 81 S.W.3d 781, 790-93 (Tenn. Crim. App. 2002) (Appendix).

12 Taken from State v. Williams, 690 S.W.2d 517, 519 (Tenn. 1985). Only use these definitions if charging the T.C.A. § 39-13-204(i)(5) aggravator.

13 It is error for the trial court "to charge any statutory mitigating circumstances that were not raised by the evidence at the guilt or sentencing hearing." State v. Hartman, 703 S.W.2d 106, 118 (Tenn. 1985), cert denied 478 U.S. 1010, 106 S.Ct. 3308, 92 L.Ed. 2d 721 (1986). Any of the statutory mitigating circumstances not raised by the evidence (except for T.C.A. § 39-13-204(j)(9), beginning with "Any other mitigating factor which is raised by the evidence") should be excluded, and the remaining statutory mitigators re-numbered in the charge along with the nonstatutory mitigators. T.C.A. § 39-13-204(e)(1) only requires the trial judge to include "any mitigating circumstances *raised by the evidence* at either the guilt or sentencing hearing or both." (Emphasis supplied).

14 The defendant wanting nonstatutory mitigators "must submit the requested instruction in writing to the trial court." State v. Odom, 928 S.W.2d 18, 31 (Tenn. 1996). The trial judge should never instruct "fact specific" mitigators requested by the defense. This would imply to the jury that the trial judge had made findings of fact in contravention of

Article VI, § 9 of the Tennessee Constitution. *Id*. at 32. Specificity on nonstatutory mitigators is inappropriate.

> [I]nstructions on nonstatutory mitigating circumstances must be phrased in general categories similar to the statutory mitigating circumstances… A trial court has no duty, absent a timely and proper request form the defense, to include instructions on nonstatutory mitigating circumstances … However, when the defense proffers a requested instruction which is overly specific, it is incumbent upon the trial court to revise and generalize the instruction to conform to the evidence and the law.

State v. Hodges, 944 S.W.2d 346, 356 (Tenn. 1997) (citations and footnotes omitted), cert denied 522 U.S. 999, 118 S.Ct. 567, 139 L.Ed.2d 407 (1997), citing *Odom*.

15 Note that this mitigating circumstance must be charged in every case. It is a compilation of U.S. Supreme Court cases.

T.P.I. – CRIM. 11.03(c)

FIXING AGGREGATE VALUE

[Use 11.03(d) for forgery and criminal simulation offenses]

If you find the defendant guilty of Count _____ beyond a reasonable doubt, you must go further and fix the range of value of the *[property] [services]*.

(A) Value is:

(1) the fair market value of the *[property] [services]* at the time and place of the offense; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense.

[(B) The value of documents, other than those having a readily ascertainable fair market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.]

[(C) If the *[property] [service]* has value that cannot be ascertained by the criteria set forth in parts (A) or (B), the property or service is deemed to have a value of less than fifty dollars ($50).]

[(D) If the defendant gave consideration for or had a legal interest in the *[property] [services]* which *[is] [are]* the object of the offense, the amount of consideration or value of the interest shall be deducted from the value of the *[property] [services]* ascertained under part (A), (B), or (C) to determine value.]

[(E) If the animal killed was a police dog, fire dog, search and rescue dog, service animal or police horse, the jury shall consider the value of the police dog, fire dog, search and rescue dog, service animal or police horse as both the cost of the animal and any specialized training the animal received.]

[(F) In determining the value of the property vandalized, the value of the property shall be fixed at the amount of the damage, the reasonable cost of repairing the damage to the property, or the cost of replacement of the property vandalized.]

[(G) In determining the value of the destruction or interference, the value of the destruction shall be fixed at the amount of the damage or the cost of replacement of the property. The value of the interference shall be fixed at the amount of the interference to the railroad.]

[(H) [For a violation of 16.01 and 16.03 and a violation of some provisions in 16.02 only] Value includes *[the face value of the creation of or amount of alteration to any financial instrument or of an electronic transfer of funds] [the cost of any alteration, damage, destruction or disruption to any computer, computer system, computer network, computer software,*

program, or data] [the market value of any 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] [the amount of any proceeds received, concealed or used].]

The state has the burden of proving this value beyond a reasonable doubt as defined in these instructions.

If you find the defendant guilty of only one of the criminal acts as set out in Count _____ beyond a reasonable doubt, you must go further and identify that criminal act and fix the range of value of the property in that one criminal act only.

If you find the defendant guilty of more than one criminal act as set out in Count _____ beyond a reasonable doubt, you must go further and identify each criminal act and fix the range of aggregated value[1] of the property.

"Aggregated" means collected into one sum.[2]

The monetary value of the property from multiple criminal acts which are charged in a single count shall be aggregated to establish value if you find, beyond a reasonable doubt, that the multiple criminal acts arose from a common scheme, a common purpose, a common intent, or a common enterprise. You may aggregate only the values of the property used to commit those criminal acts that arose from a common scheme, a common purpose, a common intent, or a common enterprise.[3]

A "common scheme" involves multiple criminal acts committed pursuant to a systematic plan or plot or that are part of a larger, continuing plan or conspiracy.

A “common purpose” involves multiple criminal acts committed pursuant to the same objective, goal, or end.

A “common intent” involves multiple criminal acts committed with the same state of mind. That state of mind is a conscious objective or desire to engage in the multiple criminal acts proven.

A “common enterprise” involves multiple criminal acts committed pursuant to a single venture.

You will fix the aggregated value of the *[property] [services] [obtained] [killed] [vandalized] [destroyed] [interfered with]* along with your verdict by indicating which of the following ranges the aggregated value falls within:

1. One thousand dollars ($1,000) or less;
2. More than one thousand dollars ($1,000), but less than two thousand five hundred dollars ($2,500);
3. Two thousand five hundred dollars ($2,500) or more, but less than ten thousand dollars ($10,000);
4. Ten thousand dollars ($10,000) or more, but less than sixty thousand dollars ($60,000);
5. Sixty thousand dollars ($60,000) or more [**only for offenses committed on or after 7/1/12:** , but less than two hundred fifty thousand dollars ($250,000);
6. Two hundred fifty thousand dollars ($250,000) or more].]

If you find the defendant guilty of only one of the criminal acts set out in Count _____, your verdict shall be "We, the jury, unanimously find the defendant guilty of the act of _____, and set the value of the property at _____.

If you find the defendant guilty of more than one of the offenses set out in Count _____, your verdict shall be in the following form: "We, the jury, unanimously find the defendant guilty beyond a reasonable doubt of the following criminal acts, and further unanimously find that they each arose from a common scheme, a common purpose, a common intent, or a common enterprise:

1. The act of _____with a value of _____;

2. The act of _____ with a value of _____;

[3]. The act of _____ with a value of _____;

[4]. The act of _____ with a value of _____;

[5]. The act of _____ with a value of _____ ; and

further find that the total aggregate value of the property is in the following range: ____ .

FOOTNOTES

_____

1. Tenn. Code Ann. § 39-14-105(b) and *State v. Odom*, 64 S.W.3d 370, 374 (Tenn. Crim. App. 2001).

2. Dictionary.com.

3. The definitions of these four terms are taken from *State v. Denton Jones*, 589 S.W.3d 747 (Tenn. 2019).

T.P.I. – CRIM. 11.03(d)

FIXING APPARENT AGGREGATE VALUE

[to be used only in forgery or criminal simulation cases]

If you find the defendant guilty of Count _____ beyond a reasonable doubt, you must go further and fix the range of apparent value of the property.

"Apparent Value" is the apparent fair market value of the property at the time and place of the offense. The state has the burden of proving this apparent value beyond a reasonable doubt as defined in these instructions.

“Apparent” means visible, manifest or obvious.[1]

If you find the defendant guilty of only one of the criminal acts of *[forgery] [criminal simulation]* as set out in Count _____ beyond a reasonable doubt, you must go further and identify that criminal act and fix the range of apparent value of the property in that one criminal act only.

If you find the defendant guilty of more than one criminal act as set out in Count _____ beyond a reasonable doubt, you must go further and identify each criminal act and fix the range of apparent aggregated value[2] of the property.

“Aggregated” means collected into one sum.[3]

The apparent monetary value of the property from multiple criminal acts which are charged in a single count shall be aggregated to establish value if you find, beyond a reasonable doubt, that the multiple criminal acts arose from a common scheme, a common purpose, a common intent, or a common enterprise. You may aggregate only

the apparent values of the property used to commit those criminal acts that arose from a common scheme, a common purpose, a common intent, or a common enterprise.[4]

A "common scheme" involves multiple criminal acts committed pursuant to a systematic plan or plot or that are part of a larger, continuing plan or conspiracy.

A "common purpose" involves multiple criminal acts committed pursuant to the same objective, goal, or end.

A "common intent" involves multiple criminal acts committed with the same state of mind. That state of mind is a conscious objective or desire to engage in the multiple criminal acts proven.

A "common enterprise" involves multiple criminal acts committed pursuant to a single venture.

You will fix the apparent value of the property along with its verdict by indicating which of the following ranges the apparent value falls within:

1. One thousand dollars ($1,000) or less;
2. More than one thousand dollars ($1,000), but less than two thousand five hundred dollars ($2,500);
3. Two thousand five hundred dollars ($2,500) or more, but less than ten thousand dollars ($10,000);
4. Ten thousand dollars ($10,000) or more, but less than sixty thousand dollars ($60,000);
5. Sixty thousand dollars ($60,000) or more [**only for offenses committed on or after 7/1/12:** , but less than two hundred fifty thousand dollars ($250,000);

6. Two hundred fifty thousand dollars ($250,000) or more].]

If you find the defendant guilty of only one of the criminal acts set out in Count _____, your verdict shall be "We, the jury, unanimously find the defendant guilty of the act of____, and set the apparent value of the property at ____.

If you find the defendant guilty of more than one of the criminal acts set out in Count _____, your verdict shall be in the following form:

"We, the jury, unanimously find the defendant guilty beyond a reasonable doubt of the following criminal acts, and further unanimously find that they each arose from a common scheme, a common purpose, a common intent, or a common enterprise:

1. The act of _____ with an apparent value of _____;

2. The act of _____ with an apparent value of _____;

[3]. The act of _____ with an apparent value of _____;

[4]. The act of _____ with an apparent value of _____;

[5]. The act of _____ with an apparent value of _____ ; and further find that the total apparent aggregate value of the property is in the following range:_____ .

FOOTNOTES

1. *Black's Law Dictionary* (7th Ed. 1999).

2. Tenn. Code Ann. §39-14-105(b) and *State v. Odom*, 64 S.W.3d 370, 374 (Tenn. Crim. App. 2001).

3. Dictionary.com.

4. The definitions of these four terms are taken from *State v. Denton Jones*, 589 S.W.3d 747 (Tenn. 2019).

T.P.I. – CRIM. 11.11

THEFT OF MAIL

Any person who commits the offense of theft of mail is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:[1]

(1) that the defendant took mail from *[a residential mailbox] [the curtilage of a dwelling]*;

and

(2) that the defendant did not have the consent of the addressee;

and

(3) that the defendant intended to deprive the addressee of the mail.

"Addressee" means the person to whom a piece of mail is addressed.[2]

“Curtilage” means the area surrounding a dwelling that is necessary, convenient and habitually used for family purposes and for those activities associated with the sanctity of a person's home.[3]

"Deprive" means:

[(a) to withhold property from the owner permanently or for such a period of time as to substantially diminish the value or enjoyment of the property to the owner;] or

[(b) to withhold property or cause it to be withheld for the purpose of restoring it only upon payment of a reward or other compensation;] or

[(c) to dispose of property or use or transfer any interest in it under circumstances that make its restoration unlikely].[4]

"Effective consent" means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception*[5] *or coercion*[6] *if fairly raised in the proof]*[7];] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].[8]

"Intended" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.[9]

"Mail" means a letter, postal card, package, bag, or other sealed article that:

(A) Is delivered by a common carrier or delivery service and not yet received by the addressee; or

(B) Has been left to be collected for delivery by a common carrier or delivery service.[10]

[The trial judge should now instruct the jury with respect to fixing the value of the property obtained. See T.P.I. CRIM. -- 11.03(a).]

COMMENTS

1. Theft of mail is graded identically to theft of property, except that "in no event shall punishment for a second or subsequent offense of mail theft be less than a Class E felony." T.C.A. § 39-14-129(c).

FOOTNOTES

1. T.C.A. § 39-14-129.
2. T.C.A. § 39-14-129.
3. T.C.A. § 39-11-611.
4. T.C.A. § 39-11-106.
5. T.C.A. § 39-11-106.
6. T.C.A. § 39-11-106.
7. State v. Pope, 427 S.W.3d 363 (Tenn. 2013).
8. T.C.A. § 39-11-106.
9. T.C.A. § 39-11-106.
10. T.C.A. § 39-14-129.

T.P.I. – CRIM. 12.04(a)

AGGRAVATED CRUELTY TO ANIMALS

(for offenses committed on or after 7/1/21)

Any person who commits the offense of aggravated cruelty to animals is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:[1]

(1)(a) that the defendant *[killed] [maimed] [tortured] [crushed] [burned] [drowned] [suffocated] [mutilated] starved] [caused serious physical injury, a substantial risk of death or death to]* a companion animal with no justifiable purpose;

or

(1)(b) that the defendant failed to provide food or water to a companion animal resulting in a substantial risk of death;

and

(2) that the defendant acted intentionally or knowingly.

“Companion animal” means a pet normally maintained in or near the household or households of its owner or owners, other domesticated animal, previously captured wildlife, an exotic animal, or any other pet, including but not limited to, pet rabbits, a pet chick, duck, or pot bellied pig, not defined as livestock.[2]

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a

result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.[3]

The requirement of "knowingly" is also established if it is shown that the defendant acted intentionally.[4]

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.[5]

Comments

1. Aggravated cruelty to animals is a Class E felony. T.C.A. § 40-35-501. In addition to any other penalty imposed, the sentencing court shall order the defendant to surrender custody and forfeit all companion animals as defined in § 39-14-212(b)(2), and may award custody of the animals to the agency presenting the case. The court shall prohibit the defendant from having custody of companion animals for at least two (2) years from the date of conviction and may impose a lifetime prohibition. The court may also impose any other reasonable restrictions on the person's custody of other animals as is necessary for the protection of the animals. The court shall prohibit any person convicted of a second or subsequent offense from having custody of any companion animal for the person's lifetime. T.C.A. § 39-14-212(e).

2. T.C.A. § 39-14-212(c) lists numerous activities which are excluded from prosecution for this offense, including animal and cock fighting, lawful hunting, trapping or fishing activities, dispatching rabid, diseased, wild or dangerous animals, experiments in research laboratories, accepted veterinary medical practices, and applying methods and equipment to train animals. If any of these exceptions is raised as a defense, it is suggested that the trial judge should draft an additional instruction along the lines of the bracketed instruction included in T.P.I. – Crim. 12.04, Cruelty to Animals.

Footnotes

1. T.C.A. § 39-14-212.
2. T.C.A. § 39-14-212(b).
3. T.C.A. § 39-11-106.
4. T.C.A. § 39-11-301(a)(2).
5. T.C.A. § 39-11-106.

T.P.I. -- CRIM. 31.12(a)

SUPPLEMENTAL INSTRUCTION: DRUG-FREE ZONE[1]

If you find the defendant(s) guilty of _____ in Count _____ beyond a reasonable doubt, it will then be your duty to determine whether or not this act occurred *[on the grounds or facilities of a school]* ***[only for offenses committed prior to 9/1/20:*** *within one thousand feet (1,000')****] [only for offenses committed on or after 9/1/20:****within five hundred feet (500') of or within the area bounded by a divided federal highway, whichever is less****]*** *of the real property that comprises a [public] [private] [elementary school] [middle school] [secondary school] preschool] [child care agency] [public library] [recreational center] [park]].*

If you find that this act occurred *[on the grounds or facilities of a school]* ***[only for offenses committed prior to 9/1/20:*** *within one thousand feet (1,000')****] [only for offenses committed on or after 9/1/20:****within five hundred feet (500') of or within the area bounded by a divided federal highway, whichever is less****]*** *of the real property that comprises a [public] [private] [elementary school] [middle school] [secondary school] preschool] [child care agency] [public library] [recreational center] [park]]* beyond a reasonable doubt, you will indicate in your verdict for this count "We, the jury, also find the defendant(s) guilty of committing this act *[on the grounds or facilities of a school]* ***[only for offenses committed prior to 9/1/20:*** *within one thousand feet (1,000')****] [only for offenses committed on or after 9/1/20:****within five hundred feet (500') of or within the area bounded by a divided federal highway, whichever is less****]*** *of the real property that comprises a [public] [private] [elementary school] [middle school] [secondary school] preschool] [child care agency] [public library] [recreational center] [park]].*

If you find the State has not proven that this act occurred *[on the grounds or facilities of a school]* ***[only for offenses committed prior to 9/1/20:*** *within one thousand feet (1,000')****] [only for offenses committed on or after 9/1/20:****within five hundred feet (500') of or within the area bounded by a divided federal highway, whichever is less****]*** *of the real property that comprises a [public] [private] [elementary school] [middle school] [secondary school] preschool] [child care agency] [public library] [recreational center] [park]]*, then you shall indicate in your verdict for this count "We, the jury do not find beyond a reasonable doubt that this act occurred *[on the grounds or facilities of a school]* ***[only for offenses committed prior to 9/1/20:*** *within one thousand feet (1,000')****] [only for offenses committed on or after 9/1/20:****within five hundred feet (500') of or within the area bounded by a divided federal highway, whichever is less****]*** *of the real property that comprises a [public] [private] [elementary school] [middle school] [secondary school] preschool] [child care agency] [public library] [recreational center] [park]].*"

Your verdict must be unanimous.

Footnotes

1. T.C.A. § 39-17-432.

Comments

1. Felony possession with intent or manufacture, sale or delivery of controlled substances is not a lesser-included offense of committing those crimes in a drug-free zone. Therefore, the jury's finding as to drug-free zone must be stated by the jury in a separate finding. See State v. Jordan, E2018-00471-CCA-R3-CD, 2020

WL 360518 (Tenn. Crim. App., Knoxville, 1/21/20) citing State v. Smith, 48 S.W.3d 159, 167-68 (Tenn. Crim. App. 2000).

2. If the offense occurred prior to 9/1/20 and if the offense occurred on the grounds or facilities of any school or within one thousand feet (1,000') of the real property that comprises a public or private elementary school, middle school, or secondary school, the defendant shall be punished one (1) classification higher than is provided in § 39-17-417(b)-(i) for such violation, the maximum fines to be imposed are increased, and the minimum sentence in the defendant's range must be served at 100%. See T.C.A. § 39-17-432 and Davis v. State, 313 S.W.3d 751, 760-66 (Tenn. 2010). If the offense occurred on the grounds or facilities of a preschool, childcare center, public library, recreational center or park, the defendant shall be punished one (1) classification higher for purposes of the fines set out in T.C.A. § 39-17-432(b)(2), and the minimum sentence in the defendant's range must be served at 100%, but the defendant shall not be punished one (1) classification higher for purposes of incarceration. If the offense occurred on or after 9/1/20, the mandatory minimum sentence and enhanced punishments for drug-free zones are discretionary with the trial judge, and T.C.A. §39-17-432 should be consulted regarding enhancements of fines, letter grades of offenses, the amount of incarceration and the rebuttable presumption that an offender not be made to serve a minimum sentence unless "the defendant's conduct exposed vulnerable persons to the distractions and dangers that are incident to the occurrence of illegal drug activity." T.C.A. § 39-17-432(c).

T.P.I. – CRIM. 39.03(a)

UNLAWFUL PHOTOGRAPHING

(for offenses committed on or after July 1, 2021)

Any person who commits the offense of unlawful photographing an individual is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:[1]

(1) that the defendant *[photographed an individual] [caused an individual to be photographed]*;

and

(2)(a) that the photograph would offend or embarrass an ordinary person if such person appeared in the photograph;

or

(2)(b) that the photograph was focused on the intimate area of the individual and would be considered offensive or embarrassing by the individual;

and

(3) that the photograph was taken for the purpose of sexual arousal *[and] [or]* gratification of the defendant;

and

(4) that the photograph was made without the prior effective consent of *[the individual photographed, if an adult] [,in the case of a minor, the minor's parent or guardian]*;

and

(5) that the defendant acted knowingly in taking the photograph or in causing it to be taken.

[and]

[(6) that the defendant disseminated or permitted the dissemination of the photograph to any other person.]

[and]

[(7) that the alleged victim was under the age of thirteen (13) when the photograph was taken.]

["Disseminating" means the playing or duplicating of the recording in a manner other than authorized by this law.][2]

"Effective consent" means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

[(a) induced by deception or coercion *[the trial judge should include in the instruction applicable language from the statutory definitions for deception or coercion if fairly raised in the proof]*;] or

[(b) given by a person the defendant knows is not authorized to act as an agent;] or

[(c) given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter;] or

[(d) given solely to detect the commission of an offense].[3]

“Intimate area” means the naked or clothed genitals, pubic area, anus, buttocks or female breast of a person.[4]

"Photograph" means any photograph or photographic reproduction, whether taken using digital media or conventional film, still or moving, or any videotape, live television transmission or social media broadcast of any individual.[5]

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.[6]

The requirement of "knowingly" is also established if it is shown that the defendant acted intentionally.[7]

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.[8]

COMMENTS

a) A violation of this offense is a Class A misdemeanor unless the jury finds the defendant either disseminated or permitted the dissemination of the photograph to another person, or the victim was under age 13, in which case it is a Class E felony. If the jury finds both of those elements present, it is a Class D felony. T.C.A. § 39-13-605(d). A defendant who commits this offense as an E or D felony must register as a sex offender.

T.C.A. § 40-39-202(20)(A)(xxii). The trial judge may also order, after taking into account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender. T.C.A. § 39-13-605(f) and T.C.A. § 40-39-202(20)(A)(xxiv). For offenses committed, conspired to commit, solicited, or attempted and if the victim is under age 13, the defendant shall serve one hundred percent (100%) of the sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn, Tenn. Code Ann. § 40-35-501(aa).

FOOTNOTES

1. T.C.A. § 39-13-605.
2. T.C.A. § 39-13-604(a)(4).
3. T.C.A. § 39-11-106.
4. T.C.A. § 39-13-605(b)(2).
5. T.C.A. § 39-13-605(b)(1).
6. T.C.A. § 39-11-106.
7. T.C.A. § 39-11-301(a)(2).
8. T.C.A. § 39-11-106.

T.P.I. -- CRIM. 42.29

CONSIDERING *[REDACTED] [EDITED]* EVIDENCE

[An audio recording] [A video recording] [A writing] has been introduced as evidence in this case. Some portions of it have been *[redacted] [edited]*. You shall not speculate as to the content of any *[redacted] [edited]* portion or draw any conclusions from the fact that *[redactions] [edits]* have been made.

COMMENTS

1. "If evidence is not relevant, the admissibility does not hinge upon whether the evidence is prejudicial. If evidence is not relevant, the evidence is not admissible when a timely objection to its relevance is made. The prejudicial effect of inadmissible evidence is a factor when the inadmissible evidence is erroneously allowed into evidence and a determination of whether the error is harmless or not must be made." *State v. Moore*, 376 S.W.3d 108, 120 (Tenn. Crim. App. 2011). Therefore, if any needed redaction would be obvious to the jury, and the trial judge feels that the non-continuous nature of the evidence may cause the jury to speculate as to what is being withheld from their consideration, the trial judge may wish to give this instruction to the jury.