

CRIMINAL JURY INSTRUCTIONS
DRAFTING COMMITTEE VERSION

September 2010

January 6, 2003

Honorable Walter L. Murphy
Chief Justice
New Hampshire Superior Court
17 Chenell Drive, Suite One
Concord, NH 03301

DRAFT

Dear Judge Murphy:

Judge Smukler has informed the Bar Association's Criminal Jury Instructions Drafting Committee that several superior court judges have asked for access to the work of the committee to date. The committee is pleased to assist the superior court by complying with this request subject to several important caveats.

The draft instructions that the committee has completed most of its work on have not been reviewed or approved by the Bar's Task Force on Criminal Jury Instructions, which oversees the Drafting Committee. Therefore, these drafts represent no more than the work-in-progress of the committee. They do not carry the imprimatur of the New Hampshire Bar Association.

Moreover, although the members of the committee include representatives from the Public Defenders Office and various prosecutors offices, neither these drafts nor, when it is issued, the Bar sanctioned final product of the committee, should be regarded as reflecting the official positions of the Public Defenders Office or the state's prosecutors. The committee has endeavored to ensure that these draft instructions are balanced, comprehensible, and accurate statements of law. They are intended to serve as model instructions applicable in the spectrum of criminal cases that may arise under New Hampshire Law. Litigants in individual cases may legitimately disagree with the committee's view of the law, or, based on the facts of a particular case, may legitimately believe that one or more instructions should be modified. Such positions should be given due consideration notwithstanding the committee's viewpoint. Of course, to the extent that the New Hampshire Supreme Court has not sanctioned these instructions, they do not have the force or effect of law.

The committee's position on the most appropriate format for model jury instructions has evolved over the course of its work. Given the scope of the committee's charge, it elected to complete its substantive work before addressing matters of form. Once its substantive work is complete, the committee intends to review all of its draft instructions for format uniformity. Consequently, the structure of these draft instructions is not uniform. If these drafts are used as the basis for a jury charge, care should be taken that the charge is structured in a uniform manner.

Finally, the committee asks that this letter be incorporated as a preface to all copies of its draft instructions that are circulated.

The drafting committee hopes that these draft criminal jury instructions will be of assistance to the superior court and practitioners. The committee encourages that written comments be submitted as it continues its work. Please direct written comments to Denice DeStefano at the Bar Center, 112 Pleasant St., Concord, NH 03301 or electronically to ddestefano@nhbar.org

Sincerely,
Robert H. Temple, for
Criminal Jury Instructions
Drafting Committee

I. GENERAL INSTRUCTIONS:	10
CAMERAS IN THE COURTROOM	10
CAUSATION	11
CONDUCT OF THE JURY / (PRELIMINARY INSTRUCTION)	12
CONDUCT OF THE JURY (Court Recess)	13
CONFESSIONS OR ADMISSIONS	14
CORROBORATION OF CONFESSION	15
CREDIBILITY OF WITNESSES	16
CREDIBILITY OF WITNESSES - INFORMANT'S TESTIMONY	17
CREDIBILITY OF WITNESSES - ACCOMPLICE TESTIMONY	18
CREDIBILITY OF WITNESSES - TESTIMONY OF IMMUNIZED WITNESS	19
CREDIBILITY OF WITNESSES - TESTIMONY OF A CHILD	20
DEADLOCKED JURY	21
DEFINITION OF A CRIME	22
DIRECT AND CIRCUMSTANTIAL EVIDENCE	23
DUTY TO DELIBERATE	24
EVIDENCE IN THE CASE	25
EXPERT TESTIMONY	26
FLIGHT BY THE DEFENDANT	27
FUNCTION OF THE COURT AND JURY	28
IDENTIFICATION	29
INDICTMENT NOT EVIDENCE	31
JUDICIAL NOTICE	32
JURY RECOLLECTION CONTROLS	33
LESSER INCLUDED OFFENSES (STANDARD INSTRUCTION)	34
LESSER INCLUDED OFFENSES (SPECIAL INSTRUCTION)	35
MENTAL STATES - PURPOSELY	36

MENTAL STATES - KNOWINGLY.....	37
MENTAL STATES - RECKLESSLY	38
MENTAL STATES - NEGLIGENTLY	39
MENTAL STATES - PROOF OF MENTAL STATE.....	40
NUMBER OF WITNESSES	41
OUTLINE OF TRIAL	42
POSSESSION.....	43
POSSIBLE PUNISHMENT NOT RELEVANT	44
STIPULATIONS.....	45
II. CRIMES.....	46
INDIRECT CRIMINAL CONTEMPT	46
PISTOLS AND REVOLVERS	47
RSA 159:3: Felon in Possession.....	47
PROTECTION FROM DOMESTIC VIOLENCE	48
RSA 173-B:9, III Violation of Protective Order	48
RSA 173-B:9, IV Crime of Abuse (Enhanced)	49
ALCOHOLIC BEVERAGES	51
RSA 179:5: Prohibited Sales.....	51
DRIVERS LICENSES	52
RSA 263:64: Operating after Revocation or Suspension	52
DISOBEYING AN OFFICER	53
RSA 265:4, I (a), Refusal on Request of Officer to Give Information.....	53
RSA 265:4, I (b): Giving False Information to a Law Enforcement Officer	54
RSA 265:4, I (c): Purposely Neglect to Stop (or Willful Attempt to Elude Pursuit	55
RSA 265:4, I (d) Refusal to Sign Name.....	56
RSA 265:4, I (e): Refusal to Provide License or Registration	57
RSA 265:4, I(f) Refusal to Produce License, Registration or Number Plate After	58
Suspension or Revocation.....	58
RULES OF THE ROAD	59
RSA 265:82-a: Aggravated Driving while Under The Influence – Serious Bodily Injury.....	59
RSA 265:82-a, I & II: Aggravated Driving While Intoxicated [Catchall]	60
RSA 265:82-a, III: Aggravated Driving While Intoxicated [0.16 BAC].....	61
RSA 265:82, I(a) Driving Under Influence of Intoxicating Liquor	62
RSA 265:82, I(b) Driving with excess alcohol concentration.....	63
RSA 265:93-b I Driving a Motor Vehicle Not Equipped with an Alcohol Ignition Interlock Device.....	64
RSA 265:93-b II – Tampering with the Operation of an Ignition Interlock Device.....	65
RSA 265:93-b III Starting a Motor Vehicle Equipped with an Ignition Interlock Device to Provide a Vehicle for a Person who is Restricted to Drive on a Vehicle so Equipped	66
RSA 265:93-b IV Providing a Motor Vehicle not Equipped with a Functional Ignition Device to Another Person Sentenced to Drive Only Such a Vehicle.....	67

CONTROLLED DRUG ACT.....	68
RSA 318-B:2, I [Possess], [Have Under His/Her Control], [A Controlled Drug], [A Controlled Drug Analog], Or [A Preparation Containing A Controlled Drug].....	68
RSA 318-B:2, I Manufacture [A Controlled Drug], [A Controlled Drug Analog], Or [A Preparation Containing A Controlled Drug].....	69
RSA 318-B:2, I [Purchase], [Prescribe], [Administer], [Transport] [A Controlled Drug], [A Controlled Drug Analog], Or [A Preparation Containing A Controlled Drug].....	70
RSA 318-B:2, I Sale o f [A Controlled Drug][A Controlled Drug Analog][Any Preparation Containing a Controlled Drug].....	71
RSA 318-B:2, I [Possession] [Transportation] Of A [Controlled Drug][Controlled Drug Analog] [A Preparation Containing a Controlled Drug] With Intent To [Sell] [Dispense] [Compound]	72
RSA 318-B:2,XII Drug Enterprise Leader.....	74
INCHOATE CRIMES	76
RSA 629:1 Attempt.....	76
RSA 629:2 Criminal Solicitation	77
RSA 629:3 Conspiracy	78
HOMICIDE	80
RSA 630:1,I(a)Capital Murder	80
RSA 630:1, I(b) (e) (f) Capital Murder	81
RSA 630:1,I(d)Capital Murder	82
RSA 630:1-a, I(a) First degree murder	83
RSA 630:1-a, I (b) (1) First Degree Murder	84
RSA 630:1-a, I(b)(2)First Degree Murder	85
RSA 630:1-a,I(b)(3)) First Degree Murder.....	86
RSA 630:1-a, I (b)(4) First Degree Murder	87
RSA 630:1-b, 1 (a)Second Degree Murder (Knowingly)	88
RSA 630:1-b,I(b) Second Degree Murder (Recklessly W/Extreme Indifference)	89
RSA 630:2,I (a) Manslaughter (Provocation)	90
RSA 630:2, I (b) Manslaughter (Reckless)	91
RSA 630:3 Negligent Homicide (General)	92
RSA 630:3 Negligent Homicide (DWI).....	93
RSA 630:4 Causing or Aiding Suicide.....	94
ASSAULT AND RELATED OFFENSES.....	95
RSA 631:1, (I) (a) First Degree Assault.....	95
RSA 631:1 (I) (b) First Degree Assault.....	96
RSA 631:1 (I) (c) First Degree Assault.....	97
RSA 631:1 (I) (d) First Degree Assault.....	98
RSA 631:2(I) (a) Second Degree Assault -	99
RSA 631:2(I) (b) Second Degree Assault	100
RSA 631:2(I) (c) Second Degree Assault	101
RSA 631:2(I) (d) Second Degree Assault	102
RSA 631:2(I) (e) Second Degree Assault	103
RSA. 631:3 Reckless Conduct	104
RSA 631:4, I (a) Criminal Threatening (Placing or attempting to place another in fear.).....	105
RSA 631:4, I (b) Criminal Threatening (Placing an object or graffiti on the property of another).....	106
RSA 631:4, I (c) Criminal Threatening (Crime against property)	107
RSA 631:4, I (d) Criminal Threatening (Crime against another).....	108
RSA 631:4, I (e) Criminal Threatening (Crime of violence)	109
RSA 631:4, I (f) Criminal Threatening (Crime of violence).....	110
SEXUAL ASSAULT AND RELATED OFFENSES	111
RSA 632-A:2, I(a): AFSA Overcoming by physical force.....	111
RSA 632-A:2, I(b): AFSA Victim physically helpless to resist	112
RSA 632-A:2, I(c):AFSA Coercion by threats of force	113
RSA 632-A:2, I(d):AFSA Coercion by threats of retaliation	114

RSA 632-A:2, I(e): AFSA Victim submits under circumstances involving false imprisonment, kidnapping or extortion	115
RSA 632-A:2, I(f):AFSA Administering an Intoxicating Substance	116
RSA 632-A:2, I(g) AFSA Therapeutic or Treating Relationship	117
RSA 632-A:2, I(h): AFSA Mental Defect.....	118
RSA 632-A:2, I(i):AFSA Through Concealment or the Element of Surprise	119
RSA 632-A:2, I(j): AFSA – Same Household/Blood or Affinity	120
RSA 632-A:2, I(k): AFSA Use of Authority to Coerce.....	121
RSA 632-A:2, I(l):AFSA Victim Under 13 Years of Age	122
RSA 632-A:2, I(m): AFSA Non-Consent Indicated by Speech or Conduct	123
RSA 632-A:2, I(n) AFSA Position of authority incarceration or probation	124
RSA 632-A:2, II: AFSA Without Penetration; Person Under Age 13	125
RSA 632-A:6, I: Corroboration.....	126
RSA 632-A:6, III: Consent	127
RSA 632-A: 10 I Prohibition from Child Care Service of Persons Convicted of Certain Offenses	128
RSA 632-A:10 II or III Prohibition from Child Care Service of Persons Convicted of Certain Offenses	129

INTERFERENCE WITH FREEDOM.....130

RSA 633:1, I Kidnapping (General Instruction)	130
RSA 633:1, I-a Kidnapping (Child Under 18 Years of Age).....	131
RSA 633:2 Criminal Restraint	132
RSA 633:3 False Imprisonment	133
RSA 633:3-a, I(a) – Stalking Course of Conduct; Reasonable Person	134
RSA 633:3-a, I(b) – Stalking Intent to Cause Fear	136
RSA 633:3-a, I(c) – Stalking Single Act; Protective Order.....	138
RSA 633:4, I Interference With Custody (Felony).....	139
RSA 633:4, II Interference With Custody (Misdemeanor)	140

DESTRUCTION OF PROPERTY.....141

RSA 634:1, I Arson (Misdemeanor)	141
RSA 634:1, II (a) Arson in Occupied Structure	142
RSA 634:1, III Arson on historic structure	143
RSA 634:III (a) Arson for Insurance.....	144
RSA 634:1, III (b) Arson – Danger of death or serious bodily injury	145
RSA 634:1, III (d) Arson – Damage over \$1,000	146
RSA 634:2 Criminal Mischief Class B Felony	147
RSA 634:2 Criminal Mischief Misdemeanor.....	149

UNAUTHORIZED ENTIREES150

RSA 635:1 Burglary (Class A Felony; Nighttime Entry Of A Dwelling).....	150
---	-----

THEFT151

RSA 637:3: Theft by Unauthorized Taking or Transfer	151
RSA 637:5: Theft by Extortion (Class B felony regardless of value of property)	152
RSA 637:5: Theft by Extortion (Level of offense depends on value of property)	153

FRAUD.....154

RSA 638:1, I (a): Altering a Writing or Uttering an Altered Writing	154
RSA 638:1, I (b): Unaltered Writing Purporting to be the Act of Another.....	155
RSA 638:1, I (b): Forgery—Unaltered Writing Fraudulent Execution	156
RSA 638:1, I (b): Forgery—Fraudulent Copy	157
RSA 638:2: Fraudulent Handling of Recordable Writings.....	158
RSA 638:3: Tampering with Public or Private Records.....	159
RSA 638:4: Issuing Bad Checks (Single check).....	160
RSA 638:4: Issuing Bad Checks (Course of conduct)	161
RSA 638:5: Fraudulent Use of a Credit Card	162
RSA 638:11: Misapplication of Property (by a fiduciary)	163
RSA 638:11: Misapplication of Property (of the government or a financial institution)	164

OFFENSES AGAINST THE FAMILY.....	165
RSA 639:1: Bigamy.....	165
RSA 639:2: Incest.....	166
RSA 639:3, I: Endangering the Welfare of Child or Incompetent (Violation of Duty of Care).....	167
RSA 639:3, I: Endangering the Welfare of Child or Incompetent (Inducement).....	168
RSA 639:3, II: Endangering the Welfare of Child (Tattooing).....	169
RSA 639:3, III: Endangering the Welfare of Child (Solicitation of Sexual Activity).....	170
RSA 639:3, III: Endangering the Welfare of Child (Solicitation of Sexual Penetration).....	171
RSA 639:4: Non-Support.....	172
RSA 639:5: Concealing Death of a Newborn.....	173
CORRUPT PRACTICES	174
RSA 640:2, I(a) Bribery [offering of].....	174
RSA 640:2, I (b) Bribery [failure to report]).....	175
RSA 640:2, I (b) Bribery soliciting, accepting].....	176
RSA 640:3, I (a) Improper influence [threats].....	177
RSA 640:3, I (b) Improper influence [private communication].....	178
RSA 640:3, I(c) Improper influence [failure to report private communications].....	179
RSA 640:3, I (c) Improper influence [failure to report threats].....	180
RSA 640:4, I Compensation for past acts [soliciting, accepting]).....	181
RSA 640:4, II Compensation for past acts [paying, offering].....	182
RSA 640:5, I Gifts to public servants [soliciting, accepting].....	183
RSA 640:5, II Gifts to public servants [paying, offering].....	184
RSA 640:6 I Compensation for services [soliciting, accepting].....	185
RSA 640:7, I Purchase of public office [soliciting, accepting].....	186
RSA 640:7, II Purchase of public office [offering].....	187
FALSIFICATION IN OFFICIAL MATTERS.....	188
RSA 641:1, I (a) Perjury (False Statement).....	188
RSA 641:1, I (b) Perjury (Inconsistent Statements).....	189
RSA 641:2, I: False swearing (False statement).....	190
RSA 641:2, II: False swearing (Inconsistent statement).....	191
RSA 641:3, I: Unsworn falsification.....	192
RSA 641:3, II (a): Unsworn falsification.....	193
RSA 641:3, II (b): Unsworn falsification.....	194
RSA 641:3, II (c): Unsworn falsification.....	195
RSA 641:4, I: False reports to law enforcement.....	196
RSA 641:4, II: False reports to law enforcement.....	197
RSA 641:5, I: Tampering with Witnesses and Informants.....	198
RSA 641:5, II: Tampering with Witnesses and Informants (Retaliation).....	199
RSA 641:5, III: Tampering with Witnesses and Informants (Solicitation).....	200
RSA 641:6, I: Falsifying Physical Evidence.....	201
RSA 641:6, II: Falsifying Physical Evidence.....	202
RSA 641:7, I: Tampering with Public Records.....	203
RSA 641:7, II: Tampering with Public Records.....	204
RSA 641:7, III: Tampering with Public Records.....	205
RSA 641:8: False Filing with the Director of Charitable Trusts.....	206
OBSTRUCTING GOVERNMENTAL OPERATIONS	207
RSA 642:1: Obstructing governmental operations.....	207
RSA 642:2: Resisting arrest or detention.....	208
RSA 642:3, I(a)-(e): Hindering apprehension or prosecution.....	209
RSA 642:3, I (f): Hindering apprehension or prosecution (wiretap).....	210
RSA 642:4 Aiding Criminal Activity.....	211
RSA 642:5 Compounding.....	212
RSA 642:6 Escape.....	213
RSA 642:7 I Providing Implements For Escape Or Contraband.....	214
RSA 642:8: Bail Jumping.....	215

RSA 642:9, I Assault By Prisoner.....	216
RSA 642:9, II Aggravated Assault By A Prisoner.....	217
RSA 642:10 Obstructing Report Of Crime Or Injury	218
ABUSE OF OFFICE	219
RSA 643:1: Official Oppression	219
RSA 643:2: Misuse of Information.....	220
BREACHES OF THE PEACE AND OTHER OFFENSES	221
RSA 644:1, I (a) Engaging in a Riot	221
RSA 644:1, I (b) Assembling for the Purpose of Engaging in a Riot.....	222
RSA 644:1, I (c) Riot [Assembling for purpose of committing an offense against a supposed violator of the law].....	223
RSA 644:1, III Riot [Refusal to render assistance to law enforcement]	224
RSA 644:2, I Disorderly Conduct [Creating hazardous condition]	225
RSA 644:2, II (a) Disorderly Conduct [Fighting or violent, tumultuous or threatening behavior]	226
RSA 644:2, II (b) Disorderly Conduct (Obscene, derisive or offensive words)	227
RSA 644:2, II (c) Disorderly Conduct (Obstructing traffic)	228
RSA 644:2, II (d) Disorderly Conduct [Interfering with a criminal investigation, fire fighting or emergency services]	229
RSA 644:2, II (e) Disorderly Conduct (Refusal to comply with a lawful order)	230
RSA 644:3 False Public Alarms.....	231
RSA 644:3-a False Fire Alarms	232
RSA 644:3-b False Fire Alarms Resulting in Injury or Death	233
RSA 644:3-c Unlawful Interference with Fire Alarm Apparatus	234
RSA 644:4, I (a) Harassment (Telephone Calls).....	235
RSA 644:4, I (b): Harassment (Repeated communications at inconvenient hours or using obscene language) ...	236
RSA 644:4, I (c): Harassment (Insulting, taunting, or challenging).....	237
RSA 644:4, I (d): Harassment (Communicating any matter tending to incite murder, assault, or arson)	238
RSA 644:4, I (e): Harassment (Communicating a threat)	239
RSA 644:4, I (f): Harassment (Communicating after notification).....	240
RSA 644:7 Abuse of Corpse	241
RSA 644:8-a, I Exhibitions of Fighting Animals (Keeping or training)	242
RSA 644:8-a, I Exhibitions of Fighting Animals (Establishing or promoting an exhibition of fighting)	243
RSA 644:8-a, II Exhibitions of Fighting Animals (Presence during preparations).....	244
RSA 644:8-a, II Exhibitions of Fighting Animals (Presence at, aiding in or contributing to the exhibition)	245
RSA 644:8-aa Animals in Motor Vehicle.....	246
RSA 644:8 III (a) Cruelty to Animals - Deprive of Care or Shelter.....	247
RSA 644:8 III (b) Cruelty to Animals – Beat, Whip, Torture or Mutilate.....	248
RSA 644:8 III (c) Cruelty to Animals – Overwork.....	249
RSA 644:8 III (d) Cruelty to Animals – Improper Transport.....	250
RSA 644:8 III (e) Cruelty to Animals – Abandon.....	251
RSA 644: 8 III (f) Cruelty to Animals – Catchall	252
RSA 644:8 III-a Cruelty to Animals – Beat, Whip, Torture or Mutilate – Purposely.....	253
RSA 644:17 I Willful concealment	254
RSA 644:17 II Shoplifting	255
PUBLIC INDECENCY.....	256
RSA 645:1 I (a) Indecent exposure and lewdness (Misdemeanor)	256
RSA 645:1 I (b) Indecent exposure and lewdness [Misdemeanor].....	257
RSA 645:1 II (a) Indecent exposure and lewdness [Class B felony] [Child age 12 years old or under])	258
RSA 645:1 II (b) Indecent exposure and lewdness [Class B felony][Subsequent offense].....	259
RSA 645:1 III (a) Indecent exposure and lewdness [Class A felony]	260
RSA 645:2, I (a) Solicitation.....	262
RSA 645:2, I (b) Prostitution [Induce another]	263
RSA 645:2, I (c) Prostitution [Transport]	264
RSA 645:2, I (d) Prostitution [Supported by]	265
RSA 645:2, I (e) Prostitution [Furnish place]	266
RSA 645:2, I (f) Prostitution [Pay/offer]	267

COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION PREVENTION	268
RSA 649-B:3 Computer Pornography	268
OBSCENE MATTER.....	269
RSA 650:2, 1 (a) Obscenity [Sale].....	269
RSA 650:2, I (b) Obscenity [Present or direct performance].....	270
RSA 650:2, I (c) Obscenity [Publish].....	271
RSA 650:2, I (d) Obscenity [Possess with intent to sell]	272
RSA 650:2, 1 (e) Obscenity [Commercial dissemination].....	273
SEXUAL OFFENDER REGISTRATION	274
RSA 651-B:9 Failure to Comply with Requirements of Sexual Offender Registration.....	274
III. DEFENSES	275
INTOXICATION.....	275
RSA 626:4 Intoxication	275
EFFECT OF IGNORANCE OR MISTAKE.....	276
RSA 626:3 I Effect of Ignorance or Mistake	276
RSA 626:3 II Effect of Ignorance or Mistake	277
INSANITY	278
RSA 628:2 Insanity (Guilt Phase Waived).....	278

I. GENERAL INSTRUCTIONS:

CAMERAS IN THE COURTROOM¹

DRAFT

I have given permission for cameras to be used during the trial. The presence of cameras does not make this case more important than any other. All criminal trials are equally important to the defendant and the community. You should not draw any inferences or conclusions from the fact that during this particular trial, cameras are present.

Your complete attention must be focused on the trial. You should ignore the presence of the cameras. If you find at any time that you are unable to concentrate because of the cameras, please notify me immediately through one of the court security officers so that I may take any necessary corrective action.

¹ Modeled upon NH Bar Association, *New Hampshire Criminal Jury Instructions* Instruction 1.28, at 31 (1985)

CAUSATION¹

DRAFT

Thus,, it is necessary for the State to prove that the defendant's act(s) caused the [prohibited result]¹. In determining whether causation has been proved, keep in mind that the defendant's conduct need not be the sole cause of the [prohibited result].² If you find beyond a reasonable doubt that the defendant's conduct was a substantial factor in bringing about the result, the element of causation is proven, even though other factors may have contributed to the result. Factors other than the defendant's conduct that may have contributed to the [prohibited result]² will break the causal link and defeat the element of causation only when you find that they were the sole substantial cause of the [prohibited result]². Keep in mind that it is the State's burden to prove both that the defendant's conduct was a substantial factor and that other conduct was not the sole substantial cause of the [prohibited result]².

¹ This instruction should be given whenever causation is an element of the offense and the defendant has proffered some evidence of other causal acts. *State v. Soucy* 139 N.H. 349, 354-55 (1995).

¹ Trial judge may elect to insert specific result element at issue Thus,.

CONDUCT OF THE JURY / (PRELIMINARY INSTRUCTION)

I wish to say a few words about your conduct as jurors.

First, you must keep an open mind throughout the trial, reaching your decision only during your deliberations, after all the evidence is in and after you heard the closing arguments of counsel and after you have been given my instructions on the law.

Second, do not talk to each other about this case or about anyone involved until the end of the case when you go to the jury room to decide on your verdict.

Third, do not talk with anyone else about this case or about anyone involved until the trial has ended and you have been discharged as jurors. "Anyone else" includes members of your family and your friends. You may tell them that you are a juror, but don't tell them anything about the case until after you have been discharged by me.

Fourth, do not let anyone talk to you about the case or about anyone involved with it. If someone should try to talk to you, please report it to me immediately.

Fifth, do not talk at all with any of the parties to this case, their lawyers, or the witnesses. By this I mean not only do not talk about the case, but do not talk about anything, even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors. Each of the lawyers already knows that no communication is permitted between counsel and jurors. They are not being unfriendly when they do not speak with you. The lawyers are simply following my orders.

Sixth, do not read about this case in the newspapers or on the internet or listen to any radio or television reports about the case or about anyone who has anything to do with it. If a newspaper headline or news broadcast about the case catches your eye or ear, do not examine the article or watch or listen to the broadcast any further. The reporter may not have listened to all of the testimony, may be getting information from people who you will not see here in court under oath and subject to cross-examination, may emphasize an unimportant point, or may simply be wrong.

In fact, until the trial is over, I suggest that you avoid reading any newspapers and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are, you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence. Thus, you will know more about the matter than anyone will learn through the news media.

If you inadvertently learn anything about this case, please let me know immediately.

You must base your verdict solely and exclusively on the evidence received in court during the trial.

Seventh, do not do any research, such as consulting dictionaries or other reference materials, and do not make any investigation about the case on your own.

Eighth, if you need to communicate with me, simply give a signed note to the [bailiff/clerk/law clerk] to give to me.

CONDUCT OF THE JURY (Court Recess) ¹

During this recess and all other recesses, you must not discuss this case with anyone. This includes your family, other jurors, and anyone involved in the trial. If anyone attempts in any way to talk to you about this trial during a recess, you must tell me immediately.

DRAFT

Do not watch or listen to any news reports concerning this trial on television or on radio and do not read any news accounts of this trial in a newspaper or on the internet.

Do not speak at all with any of the parties, the witnesses, or the attorneys.

You are required to keep an open mind until you have heard all of the evidence. Thus,, the closing arguments or counsel, and the final instructions of law provided by me.

¹ Modeled upon 1 A Kevin E. O'Malley et al., Federal Jury Practice and Instructions – Criminal (5th ed. 2000) § 11.02, at 70.

CONFESSIONS OR ADMISSIONS

DRAFT

You have heard evidence that the defendant made [a confession] [admissions]. The burden is on the State to prove beyond a reasonable doubt that the [confession] [admissions] [was] [were] voluntary. Unless you are convinced that the State has proven beyond a reasonable doubt that the [confession was] [admissions were] voluntary, you must not consider [it] [them] in reaching a verdict. If you decide that the defendant gave [a confession] [admissions] freely and voluntarily, then you may use the [confession] [admissions] together with all the other evidence in reaching a verdict.

[A confession is] [Admissions are] involuntary when there is overreaching or coercive conduct by the police to such an extent that it induced the defendant to make the [confession] [admissions]. However, [a confession is] [admissions are] not involuntary simply because [it was] [they were] the product of questioning, or made while the defendant was in custody, or made without the defendant's lawyer present, or made without the defendant being warned that [he] [she] had a right to remain silent and that any statements could be used against [him] [her]. Nor [is a confession] [are admissions] involuntary simply because the police made a promise to the defendant, provided [him] [her] with false information, or confronted [him] [her] with incriminating evidence. However, you should consider all such circumstances in deciding whether the [confession was] [admissions were] given freely and voluntarily.

The basic test is whether the police exerted such an influence over the defendant that [his] [her] will was overborne. In making this decision, you should consider all of the circumstances surrounding the defendant's statements, including the time and place the [confession] [admissions] occurred, the length of time the defendant was questioned, and the physical and mental condition of the defendant. You may also consider the age, education, experience, character and intelligence of the defendant to the extent that you have heard such evidence. However, unless the police engaged in overreaching or coercive conduct when considered in relation to the defendant's condition and capabilities, you should not find a statement involuntary simply because of the particular characteristics of the defendant.

State v. Phinney, 117 N.H. 145 (1977)

State v. Goddard, 122 N.H. 471 (1982)

State v. Reynolds, 124 N.H. 428 (1984)

In re Sanborn, 130 N.H. 430 (1988)

State v. Chapman, 135 N.H. 390 (1992)

State v. Beland, 138 N.H. 735 (1994)

State v. Carroll, 138 N.H. 687 (1994)

State v. Decker, 138 N.H. 432 (1994)

State v. Monroe, 142 N.H. 857 (1998)

CORROBORATION OF CONFESSION

Evidence has been introduced that the defendant made a confession concerning the crime charged. A confession by the defendant standing alone is not enough for a verdict of guilty. There must be substantial independent evidence indicating that the confession of the defendant is true. This does not mean that the State must prove the elements of the crime by evidence independent of the confession. Rather there must be sufficient independent corroboration to indicate that the confession is trustworthy.

State v. George, 109 N.H. 531 (1969)

State v. Hanley, 116 N.H. 235 (1976)

State v. Zysk, 123 N.H. 481 (1983)

CREDIBILITY OF WITNESSES

DRAFT

In deciding this case, you must decide the credibility of witnesses; that is, it is up to you to decide who to believe. If there is any conflict between the witnesses, then you must resolve the conflict. Simply because a witness has taken an oath to tell the truth does not mean that you have to accept the testimony as true.

Use your common sense and judgment. Consider factors you use in deciding important issues in your everyday lives. For example, you may consider the following:

1. The witness's appearance, attitude, and behavior on the stand and the way the witness testified;
2. The witness's age, intelligence and experience;
3. The witness's opportunity and ability to see or hear the things about which the witness testified;
4. The accuracy of the witness's memory;
5. Any motive of the witness not to tell the truth;
6. Any interest that a witness had in the outcome of the case;
7. Any bias of the witness, or friendship or animosity the witness may have for or against any of the other people in the case;
8. The consistency or inconsistency of the witness's testimony;
9. Whether or not what the witness said appears reasonable or unreasonable;
10. Whether what the witness said is consistent or inconsistent with the testimony of other witnesses, or with statements the witness made at another time.

In deciding which witnesses to believe and how much of their testimony to believe, you should consider both the direct and cross-examination of the witnesses.

If you believe that part of a witness's testimony is false, you may choose to distrust other parts also, but you are not required to do so. Inconsistencies and contradictions within a witness's testimony or between witnesses do not necessarily mean that you should disbelieve the witness. It is possible for honest people to witness the same event and see or hear things differently. You should evaluate inconsistencies and contradictions and determine whether they are important or unimportant. You need not believe any witness even though the testimony is uncontradicted. Nor are you required to accept testimony as true simply because some or even all of the witnesses agree with each other. You may find the testimony of one witness or of a few witnesses more persuasive than the testimony of a larger number.

These principles apply to all witnesses, whether they are ordinary citizens, police officers, experts or otherwise.

In short, you should consider the testimony of each witness and give it the weight you think it deserves.

CREDIBILITY OF WITNESSES - INFORMANT'S TESTIMONY

The testimony of some witnesses must be considered with more caution than the testimony of other witnesses.

Thus,, you have heard the testimony of an informant. An informant is someone who provides information or evidence against someone else in return for some consideration, usually either the payment of money or an agreement by the State to reduce or drop charges against the informant or otherwise provide the informant with a more favorable disposition of the informant's own difficulties with the law than would otherwise be the case. Under the law, the State has the right to use informants as witnesses.

The testimony of such a person may be received in evidence, considered by you, and given such weight as the jurors feel it deserves. The testimony of an informant may be enough in itself for conviction, if you find that it establishes the defendant's guilt beyond a reasonable doubt.

However, it also is true that the testimony of an informant must be scrutinized by you with great care and caution in deciding what, if any, weight it should be given. In particular, you must consider whether the testimony of an informant has been affected by the agreement the informant has struck with the State, or by the informant's own self-interest in the outcome of this case or by prejudice against the defendant

CREDIBILITY OF WITNESSES - ACCOMPLICE TESTIMONY

The testimony of some witnesses must be considered with more caution than the testimony of other witnesses.

Thus,, you have heard the testimony of a witness who was convicted of (admitted to participating in) the same offense for which the defendant is on trial. (The fact that this witness has been convicted of participating in the same crime for which the defendant is on trial is not evidence against the defendant, and you may consider the witnesses' guilty plea only in determining his/her credibility.)

The State alleges that this person is an accomplice. An accomplice is a person who unites with another person in the commission of a crime, voluntarily and with the specific intent to make the crime succeed.

You also heard evidence indicating that this witness had entered into an agreement with the State whereby, in return for his/her testimony as a witness at this trial, the State had agreed to provide the accomplice with a more favorable disposition of his/her own legal difficulties than would otherwise be the case.

The State is entitled to enter into such agreements with an accomplice and to rely on the testimony of accomplices in support of its case. The testimony of an accomplice may be received in evidence, considered by you, and given such weight as you feel it deserves. The testimony of an accomplice may be enough in itself for conviction, if you find it establishes the defendant's guilty beyond a reasonable doubt.

However, it also is true that the testimony of an accomplice must be scrutinized by you with great care and caution in deciding what, if any weight it should be given. In particular, you must consider whether the testimony of an accomplice has been affected by the agreement s/he has struck with the State, or by his/her own self-interest in the outcome of this case or by prejudice against the defendant.

CREDIBILITY OF WITNESSES - TESTIMONY OF IMMUNIZED WITNESS

DRAFT

The testimony of some witnesses must be considered with more caution than the testimony of other witnesses.

Thus,, you have heard from a witness who testified under a grant of immunity conferred by the State. This means that the witness could not refuse to testify based upon his/her assertion of the privilege against self-incrimination. However, nothing the witness said during his/her testimony can be used against the witness, directly or indirectly, in a prosecution of the witness for his/her own criminal conduct. This grant of what is known as “use immunity” applies only with respect to truthful testimony given by the witness. Like any other witness, an immunized witness could be subject to prosecution for perjury if it was discovered he/she knowingly gave false testimony.

The State is entitled to grant use immunity to a person in order to obtain the person’s testimony, and the testimony of an immunized witness may be received in evidence, considered by you, and given such weight as you feel it deserves. Indeed, the testimony of an immunized witness may be enough in itself for conviction, if you find that it establishes the defendant’s guilt beyond a reasonable doubt.

However, it also is true that the testimony of an immunized witness must be scrutinized by you with great care and caution in deciding what, if any, weight it should be given. In particular, you must determine whether the testimony of the immunized witness has been affected by self-interest, or by the agreement he/she has with the State, or by his/her own interest in the outcome of this case, or by prejudice against the defendant.

CREDIBILITY OF WITNESSES - TESTIMONY OF A CHILD

DRAFT

Most children are allowed to testify in court and you have heard testimony from a child during this trial. You are to evaluate and weigh the child's testimony and decide whether to believe the child witness. Consider first, whether the child was able to observe, remember and narrate events, and second, whether the child understood the obligation to tell the truth.

As you would with any other witness, you may consider the age of the witness and his/her demeanor on the stand; his/her manner of testifying; whether he/she understands the questions asked and his/her ability to answer those questions, and you may consider the other factors I have already discussed with you in deciding whether to believe any other witness.

State v. St. John, 120 N.H. 61, 62-63, (1980)

State v. Briere, 138 N.H. 617, 620-621, (1994)

DEADLOCKED JURY¹

DRAFT

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

While you do not have an obligation to decide this case, you do have the obligation to make a conscientious effort to do so. It is your duty, as jurors, to consult with one another and to deliberate with a view towards reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. Listen to the opinions of your fellow jurors and do not hesitate to reexamine your own views if, after listening to them, you are convinced that your views are wrong; but do not abandon your conscientious opinions if you are convinced that they are right. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans. You are judges -- judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

¹ This instruction is based on the model deadlock instructions proposed by the American Bar Association, ABA Standards for Criminal Justice, Trial by Jury Standard 15-4.4(a), at 15-134 (2nd ed. 1986) and New Hampshire Model Criminal Jury Instructions 1.7 (Murphy & Pope, N). After repeated cautions, *State v. Blake*, 113 N.H. 115, 124 (1973) *State v. Niquette*, 122 N.H. 870, 874 (1982), The New Hampshire Court has specifically ordered the trial courts to use the ABA model instruction. *State v. Jordon*, 130 N.H. 48, 49(1987). The Supreme Court has subsequently declined, however, to reverse a trial court that used a modified ABA model instruction when modification was not deemed coercive *State v. Silva*, 142 N.H. 269, 274 (1997).

DEFINITION OF A CRIME

DRAFT

A crime is the breaking of a law for which the law provides punishment. All crimes have at least two parts: an act and a criminal state of mind. In deciding whether a person is guilty of a crime, you must determine both what the person's actions were and what his/her state of mind was.

For a person to be guilty of a crime, he/she must have physically acted to do something that is criminal, and he/she must have had a particular state of mind. Unless a person both acted to do something that is criminal and had the required mental state, that person has not committed a crime. That means that if a person either did not physically act to do something criminal or did not have the required mental state, then he/she is not guilty of a crime.

To understand how mental state works, consider this example: suppose two automobile drivers hit a pedestrian who was crossing the street. Suppose one of the drivers hit the pedestrian deliberately, whereas the other one did so out of carelessness. The two drivers would be guilty of different crimes even though they both committed the same act, because each had a different mental state.

* Committee is considering a practice note.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two kinds of evidence -- direct and circumstantial. Direct evidence is direct proof of a fact, such as the testimony or statement of a person about what the person saw, heard or did. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, although it has not been proved directly. For example, if you look outside and see water droplets falling from the sky, that is direct evidence that it is raining. But if you look out the window at night and the ground is dry and again the next morning and the ground is wet, that is indirect or circumstantial evidence that it rained during the night. By circumstantial evidence, I simply mean that you may infer the ultimate fact from another fact shown. You should feel free to reach reasonable conclusions from proven facts. Conversely, you may not reach conclusions based on facts that have not been proved. In the rain example, wet ground alone may support an inference that it rained during the night, but in the absence of additional evidence, it will not necessarily support inferences about how much rain fell or for how long a time period.

You should consider both kinds of evidence. You are permitted to give equal weight to both, but it is for you to decide how much weight to give any evidence, whether it be direct or circumstantial. However, to be sufficient to establish guilt beyond a reasonable doubt, circumstantial evidence must exclude all other rational conclusions. This means that if, from the circumstantial evidence, it is rational to arrive at two conclusions, one consistent with guilt and one consistent with innocence, then you must choose the rational conclusion consistent with innocence. However, do not consider each item of circumstantial evidence in isolation. In determining whether all other rational conclusions have been excluded, you should consider each item of circumstantial evidence in the context of all the other evidence, which includes all other circumstantial evidence and direct evidence.

You should consider all the direct and circumstantial evidence in the case as well as any reasonable inferences you draw therefrom in deciding whether the State has proved all the elements of the crime beyond a reasonable doubt.

Reporter's Note:

Committee members could not agree whether the law requires that the second paragraph of this instruction need always be given in mixed evidence cases. *State v. McCue*, 134 N.H. 94, 104 (1991) ("In a case like this one, where there is only circumstantial evidence to support the conviction, the evidence must be sufficient to allow the jury to exclude all rational conclusions other than the defendant's guilt."); *State v. Sharon*, 136 N.H. 764, 766 (1993) ("It is fundamental to our justice system that where the state relies on circumstantial evidence to prove an essential component of its case, such evidence must exclude all rational conclusions except guilt."); *State v. Newcomb*, 140 N.H. 72, 80-81 (1995) ("This case contained not only circumstantial evidence but also direct evidence in the form of the defendant's admissions to witnesses. The [circumstantial evidence] instruction he received was therefore arguably more than that to which he was entitled."); *State v. Laudarowicz*, 142 N.H. 1, 5 (1997) ("When the State relies upon circumstantial evidence to prove an element of the charged offense, "such evidence must exclude all rational conclusions except guilt.""))

DUTY TO DELIBERATE¹

DRAFT

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach a unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that -- your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself if the State has proved the defendant guilty beyond a reasonable doubt, based upon the law as given to you.

¹ Modeled upon Pattern Criminal Jury Instructions of the District Judge's Association of the Sixth Circuit, Instruction 8.04 (1991).

EVIDENCE IN THE CASE

DRAFT

During your deliberations you should consider only the evidence in the case. The evidence consists of the testimony under oath of the witnesses, exhibits which have been admitted into evidence, the view, facts of which I took judicial notice, and stipulations of certain facts.

During the trial the lawyers made objections. The lawyers are supposed to object when they believe that certain evidence is not admissible. If I sustained an objection or excluded any evidence, you must not guess as to what the answer or evidence would have been. If I ordered that a question and answer be stricken from the record, you must not consider either the question or the answer as evidence.

A judge is required to be neutral, and I am in fact neutral Thus,. If you believe that I have expressed or suggested an opinion as to the facts in my rulings, you should ignore that belief. It is up to you alone to decide the facts Thus,.

In short, you should consider only the legally admissible evidence in deciding this case; that is, the testimony of the witness, the exhibits, the view, stipulations, and facts of which I took judicial notice.

EXPERT TESTIMONY

DRAFT

Thus,, you have heard the opinion/testimony of an expert[s] witness. An expert is someone who has acquired some specialized knowledge, such as scientific or technical knowledge, from experience, training, or education that qualifies the expert to give an opinion as to matters that are not common knowledge. The opinion of the expert may assist you in understanding the evidence or in deciding a fact in issue.

You are not bound by the opinion of an expert. You are free to ignore the expert's opinion if you find that the reasons given in support of the opinion are not sound, or if you find that other evidence outweighs the opinion.

FLIGHT BY THE DEFENDANT

DRAFT

You have heard evidence that may show that the defendant fled or attempted to flee. It is up to you to decide whether the evidence shows this. If you believe that it does, I instruct you that flight may be motivated by a variety of reasons. Flight does not create a presumption of guilt. Innocent people sometimes have a fear of authority or feelings of guilt which do not necessarily reflect actual guilt.

However, you may consider flight as tending to show feelings of guilt, and you may also consider feelings of guilt as evidence tending to show guilt, but you are not required to do so. You should consider the evidence of flight by the defendant in connection with all other evidence in the case and decide how important you think it is.

FUNCTION OF THE COURT AND JURY¹

The evidence and arguments Thus, have been completed. I will now instruct you as to the law that applies Thus,. You will then retire to decide a verdict Thus,.

In order to reach a fair and just verdict, you must understand and follow the law as I explain it to you. For example, you have to understand the definition of the crime that the defendant is charged with. You have to understand how convinced one way or the other you should be before you reach a verdict. You have to understand what to consider in deciding whether to believe a particular witness. These instructions will explain the law as to these and other matters so that you can reach a fair and just verdict.

It is your duty as jurors to follow all of the instructions I am about to give you. Regardless of any opinion you may have as to what the law ought to be, the law as I explain it to you is the law you must follow in reaching your verdict.

It is up to you to decide the facts Thus,. You must decide the facts solely from the evidence in this trial. You must apply the law given to you in these instructions to the facts and in this way reach a fair and just verdict.

You should decide the facts Thus, without prejudice, without fear, and without sympathy. You should decide this case based solely on the evidence presented and the law as I explain it to you.

¹ NH Criminal Jury Instructions §1.01 (1985)

IDENTIFICATION¹

DRAFT

One of the most important issues Thus, is the identification of the defendant² as the perpetrator of the crime. The State has the burden of proving identity beyond a reasonable doubt. It is not essential that a witness be free from doubt as to the correctness of his or her identification. However, you, the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict [him/her]. If you are not convinced beyond a reasonable doubt that the defendant was the person who committed the crime, you must find the defendant not guilty.

The value of identification testimony depends on the opportunity the witness had to observe the person who committed the crime at the time of the crime and to make a reliable identification later. In appraising the identification testimony of a witness, you should consider the following:

1. Did the witness have the capacity and an adequate opportunity to observe the person in question at the time of the crime? In determining this, you may consider such factors as:
 - a. The length of time available for the observation;
 - b. The distance between the witness and the person observed;
 - c. The lighting conditions;
 - d. The witness's degree of attention to the person observed;
 - e. The accuracy of any prior description of the alleged perpetrator;
 - f. Whether the witness had an occasion to see or know the person identified in the past.³

[In general, a witness bases any identification he or she makes on his or her perception through the use of his or her senses. Usually the witness identifies someone by the sense of sight - but this is not necessarily so, and he or she may use other senses].

[You may also take into account that an identification made by picking the defendant out of a group of similar individuals is generally more reliable than one that results from the presentation of the defendant alone to the witnesses.]

2. Was the identification made by the witness after the crime the product of his or her own recollection?

¹ *State v. Burke*, 122 N.H. 565, 571 (1982), held that when eyewitness identification is "essential to support a conviction," the court "will view with grave concern the failure to give specific and detailed instructions on identification . . . where identification of the defendant is based solely or substantially on eyewitness testimony." The court went on to "suggest that the trial courts be guided by the instruction set forth in *United States v. Telfaire*, 469 F.2d 552, 558-59 (D.C. Cir. 1972), where applicable." The following instruction is modeled extensively upon the *Telfaire* instruction, although it incorporates some modifications found in John M. Dinse, *et al.*, *Vermont Jury Instructions; Civil and Criminal* § 5.45, at 5-93 -- 5-94 (1993).

² Specify name of person referred to throughout this instruction as appropriate

³ *Telfaire*, 469 F.2d at 561-3 (Bazelon, C.J., concurring). Judge Leventhal, in his concurrence to the opinion, *id.*, at 561-563, stated that such an instruction would not be appropriate unless the litigants developed an adequate factual record supporting the need for it.

[3. You may take into account any occasion in which the witness failed to make an identification of the defendant, or made an identification that was inconsistent with his or her identification at trial.]

[3.[4.] Finally, you must consider the credibility of each identification witness in the same way as any other witness, including whether you consider the witness to be truthful and whether the witness had the capacity and opportunity to make a reliable observation on the matter covered in the identification testimony.

I again emphasize that the State has the burden of proving identity beyond a reasonable doubt. If, after examining the evidence, you have a reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty.

Reporter's Note

In appropriate cases involving cross-racial identification, Chief Judge Bazelon recommended that the following instruction be given [to be inserted after paragraph 1 (f)]:

You may take into account both the strength of the identification and the circumstances under which the identification was made. If the identification by the witness may have been influenced by the circumstances under which the defendant was presented to him or her for identification, you should scrutinize the identification with great care. You may also consider the length of time that elapsed between the occurrence of the crime and the next opportunity of the witness to see the defendant as a factor bearing on the reliability of the identification.

INDICTMENT NOT EVIDENCE

DRAFT

The fact that the defendant has been arrested and indicted is not evidence of guilt. The [indictment][information][complaint] is simply a way of giving the defendant notice of the charge. The [indictment][information][complaint] is a formal way of accusing the defendant of a crime in order to bring the defendant to trial. You must not consider this [indictment/information/complaint] as evidence of guilt.

JUDICIAL NOTICE

DRAFT

During this trial I have taken “judicial notice” of certain facts I regard as matters of common knowledge. You may, but are not required to, accept these facts as proved.

JURY RECOLLECTION CONTROLS¹

DRAFT

You have heard the lawyers discuss the facts and the law in their arguments to you. These arguments are not evidence. Their purpose is to help you understand the evidence and the law. If the lawyers have stated the law differently from the law as I explain it to you in these instructions, then you must follow these instructions and ignore the statements of the lawyers. If the lawyers have stated the evidence differently from how you recall it, then you should follow your own memory of what the evidence was.

¹ NH Criminal Jury Instructions §1.05 (1985)

LESSER INCLUDED OFFENSES (STANDARD INSTRUCTION)¹

If you decide that the defendant is not guilty of the crime of [greater offense], then you should go on to consider and decide whether he/she is guilty of a similar, but less serious, crime.

A similar, but less serious, crime is different from a more serious crime in one of two ways: either it requires a less serious physical act, or it requires a less serious mental intent.

Here, if you decide that the defendant is not guilty of [greater offense], then you should consider whether the State has proven beyond a reasonable doubt that he is guilty of the similar, but less serious crime of [lesser offense].

¹ *State v Taylor*, 141 N.H. 89, 94-96 (1996), holding that an “acquittal first” instruction is the proper transitional instruction in New Hampshire except under special circumstances. *See* Lesser Included Offenses (special instruction.)

LESSER INCLUDED OFFENSES (SPECIAL INSTRUCTION)¹

DRAFT

If you decide that the defendant is not guilty of the crime of [greater offense], or if after reasonable efforts you are unable to reach a verdict on the charge of [greater offense], then you should go on to consider and decide whether he/she is guilty of a similar, but less serious, crime.

A similar, but less serious, crime is different from a more serious crime in one of two ways: either it requires a less serious physical act, or it requires a less serious mental intent.

Here, if you decide that the defendant is not guilty of [greater offense], or if after reasonable efforts you are unable to reach a verdict on [greater offense], then you should consider whether the State has proven beyond a reasonable doubt that he/she is guilty of the similar, but less serious crime of [lesser offense].

¹ “Although we hold that an “acquittal first” instruction is the proper transitional instruction in New Hampshire, we recognize that there are circumstances in which the trial court may issue a reasonable efforts instruction. A situation in which that might occur is when the state and the defendant agree to a reasonable efforts instruction, either before the judge’s charge or with the court’s approval, when the jury is deadlocked.” *State v Taylor*, 141 N.H. 89,96 (1996). Accord, *State v Schultz*, 141 N.H. 101,105, (1996).

MENTAL STATES - PURPOSELY

DRAFT

Part of the definition of the crime of _____ is that the defendant acted purposely. A person acts purposely when his/her conscious object is to [cause a certain result][engage in certain conduct]. The State must prove that the defendant had the conscious object to [cause this result][engage in this conduct]. The key words here are “conscious object”. To have a “conscious object” means to have a specific intent. It means that the defendant desired to [cause a certain result][engage in certain conduct]. It is not enough for the state to prove that the defendant knew or was aware of what he/she was doing. Nor is it enough for the state to prove that the defendant created a risk of injury or harm. To prove that the defendant acted purposely requires more than that. It requires proof that the defendant specifically intended or desired to [bring about a particular result][do a particular act].¹

¹ The court and counsel should determine for the crime at issue which elements the mental state applies to, that is, which elements are material elements, as opposed to merely elements. *See* R.S.A. 625:11, IV. Unless a contrary intent plainly appears in the statute defining the crime at issue, the required mental state applies to all material elements. *See* R.S.A. 626:1, I

MENTAL STATES - KNOWINGLY¹

DRAFT

Part of the definition of the crime of _____ is that the defendant acted knowingly. A person acts knowingly when he/she is aware of the nature of his/her conduct or the circumstance under which he/she acted. The state does not have to prove that the defendant specifically intended or desired a particular result. What the state must prove is that the defendant [was aware that his/she conduct would cause a certain result] [was aware of the nature of his/her conduct] [was aware of the circumstance under which he/she engaged in the conduct].^{2, 3}

¹ This instruction is appropriate when the mental state at issue is willfully unless a purpose to impose further requirements appears. R.S.A. 626:2, IV

² In the appropriate case, the jury may be instructed that proof of a higher mental state satisfies the charged mental state. *See* R.S.A. 626:2, III; *State v. Bathalon*, 146 N.H. 485 (2001).

³ The court and counsel should determine for the crime at issue which elements the mental state applies to, that is, which elements are material elements, as opposed to merely elements. *See* R.S.A. 625:11, IV. Unless a contrary intent plainly appears in the statute defining the crime at issue, the required mental state applies to all material elements. *See* R.S.A. 626:1, I.

MENTAL STATES - RECKLESSLY

DRAFT

Part of the definition of the crime of _____ is that the defendant acted recklessly. A person acts recklessly when he/she is aware of and consciously disregards a substantial and unjustifiable risk that [certain circumstances existed when he/she acted] [his/her conduct would cause a certain result]. The risk must be of such a nature and degree that, considering the circumstances known to him/her, its disregard constitutes a gross deviation from the conduct that a law-abiding person would observe in the situation.

There are several components of a reckless mental state that the state must prove. They are:

1. The defendant was aware of a substantial and unjustifiable risk that [certain circumstances existed when he/she acted][his/her conduct would cause a particular result] and
2. The defendant consciously disregarded the risk. In other words, he/she elected to disregard the risk and take the chance that [certain circumstances existed][his/her conduct would cause a particular result]. It is not enough for the state to prove that the defendant failed to become aware of the risk involved. The state must prove that the defendant was aware of the risk and consciously disregarded it and
3. From what the defendant knew of the circumstances, his/her disregard of the risk was a gross deviation from what a law-abiding person would have done under the circumstances. The key words here are “gross deviation.” If you find that the defendant’s actions were unreasonable or thoughtless, that is not enough. To find that the defendant acted recklessly, you must find that his/her disregard of the risk was a substantial departure from what a law-abiding person would have done under the same circumstances¹.

If the defendant created a risk but is unaware of the risk solely because he/she was voluntarily [intoxicated] [under hypnosis] you should still find that he/she acted recklessly. In other words, if voluntary [intoxication] [hypnosis] made the defendant unaware that his/her conduct created a substantial and unjustifiable risk, he/she nonetheless acted recklessly.²

¹ In the appropriate case, the jury may be instructed that proof of a higher mental state satisfies the charged mental state. See R.S.A. 626:2, III; *State v. Bathalon*, 146 N.H. 485 (2001).

² The court and counsel should determine for the crime at issue which elements the mental state applies to, that is, which elements are material elements, as opposed to merely elements. See R.S.A. 625:11, IV. Unless a contrary intent plainly appears in the statute defining the crime at issue, the required mental state applies to all material elements. See R.S.A. 626:1, I.

MENTAL STATES - NEGLIGENTLY

DRAFT

Part of the definition of the crime of _____ is that the defendant acted negligently. A person acts negligently when he/she fails to become aware of a substantial and unjustifiable risk that [certain circumstance existed when he/she acted] [his/her conduct would cause a particular result]. The risk must be of such a nature and degree that his/her failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation.

There are three components of the negligent mental state that the state must prove. They are:

1. There was a substantial and unjustifiable risk that [certain circumstances existed when he acted] [his conduct would cause a particular result]; and
2. The defendant should have become aware of the risk but failed to do so; and
3. The risk was so great that the defendant's failure to become aware of it was a "gross deviation" from what a reasonable person would have done under the circumstances. The key words here are "gross deviation." If you find that the defendant's actions were unreasonable or thoughtless, that is not enough. You must find that the defendant's failure to become aware of the risk was a substantial departure from how a reasonable person would have acted under the same circumstances.

Some of you may be familiar with negligence in civil cases where one person sues another for negligently harming him. The standard for negligence in such cases is lower than the standards for negligence in criminal cases and the two standards should not be confused. Negligence in a civil case is simply the failure to exercise the degree of care that a reasonable person would exercise under the same circumstances. In a criminal case, like this one, proof of negligence requires evidence that the risk was more than an ordinary risk. It requires proof that the risk was substantial and unjustifiable and that the defendant's failure to become aware of the risk was a gross deviation from how a reasonable person would have acted in the same situation.^{1, 2}

¹ The court and counsel should determine for the crime at issue which elements the mental state applies to, that is, which elements are material elements, as opposed to merely elements. *See* R.S.A. 625:11, IV. Unless a contrary intent plainly appears in the statute defining the crime at issue, the required mental state applies to all material elements. *See* R.S.A. 626:1, I.

² In the appropriate case, the jury may be instructed that proof of a higher mental state satisfies the charged mental state. *See* R.S.A. 626:2, III; *State v. Bathalon*.

MENTAL STATES - PROOF OF MENTAL STATE

Whether the defendant acted [purposely/knowingly/recklessly/negligently] is a question of fact for you to decide. Keep in mind that there is often no direct evidence of mental state because there is no way of examining the operation of a persons mind. You should consider all the facts and circumstances in evidence in deciding whether the State has proven that the defendant acted [purposely/knowingly/recklessly/negligently].

NUMBER OF WITNESSES¹

DRAFT

The weight to be given to the evidence should be determined by the quality of the evidence not the quantity. It is not the number of witnesses or quantity of evidence, but the quality of the evidence that is important.

¹ Modeled upon Committee on Federal Criminal Jury Instructions of the Seventh Circuit, *Federal Criminal Jury Instructions* Instruction 3.28, at 52 (1980) and *NH Criminal Jury Instructions* §1.11, at 13 (1985)

OUTLINE OF TRIAL

The trial will proceed in the following manner:

Each party has an opportunity to make an opening statement. The evidence will then be presented through the testimony of the witnesses. After one side has presented a witness, the other side may cross-examine.

Once the evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. Neither opening statements nor closing arguments are evidence. Once the closing arguments are complete, I will instruct you on the law. After that, you will go to the jury room to deliberate on your verdict.

POSSESSION

DRAFT

A person “possesses” [an item] when [he/she] has it in [his/her] physical custody or exercises dominion and control over it. Possession can be actual or constructive. Actual possession is when a person has direct physical control over [the item]. Constructive possession is the power to determine the use or disposition of [the item]. In either case, the State must prove:

1. That the defendant knew the location of [the item]; and
2. That the defendant knew the nature of [the item]; and
3. That the defendant had custody of [the item] in the sense that it was in a place where it was under [his/her] control.

In a case of constructive possession, mere access to [the item] is insufficient, as is mere presence in the location where [the item] is found. The defendant must have the power to control [the item]. Constructive possession can be inferred from all the evidence presented, including any incriminating statements or any other circumstances linking the defendant to [the item]. Furthermore, constructive possession of [the item] need not be exclusive; [the item] can be possessed jointly with another.¹

¹ State v. Smalley, 148 N.H. 66 (2002); State v. Haycock, 136 N.H. 361 (1992); State v. Ward, 134 N.H. 626 (1991).

POSSIBLE PUNISHMENT NOT RELEVANT

DRAFT

The possible punishment of the defendant if you return a guilty verdict should not influence your decision. The duty of imposing sentence is for the judge. You should consider the evidence presented and base your verdict only on the evidence without considering the issue of punishment.

STIPULATIONS¹

DRAFT

A stipulation is evidence. It is an agreement between the prosecution and defense that certain facts are true. You must accept these facts as true. Thus,, it has been stipulated that

_____.

¹ NH Criminal Jury Instructions §1.07 (1985)

II. CRIMES

INDIRECT CRIMINAL CONTEMPT

DRAFT

The defendant is charged with criminal contempt of court. The definition of this offense has four parts or elements. The State must prove each element of the definition beyond a reasonable doubt. Thus, the State must prove that:¹

1. A valid court order covering the defendant exists; and
2. The defendant had notice of that order; and
3. The defendant committed one or more acts in violation of that order; and
4. The defendant acted purposely.

The elements of criminal contempt are threefold: (1) that a valid court order covering the defendant exists; (2) that the defendant had notice of that order; and (3) that the defendant committed one or more acts in violation of that order.” *State v. Stewart*, 142, 610, 611 (1998) citing *State v. Linsky*, 117 N.H. 866, 872 (1977). *See also*: Superior Court Rule 95 ¹

PISTOLS AND REVOLVERS

RSA 159:3. Felon in Possession

The defendant is charged with the crime of being a felon in possession of a firearm or dangerous weapon. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [owned] [had in his possession][had under his control] a [pistol][revolver] [other firearm][slingshot][metallic knuckles][billies][stiletto][switchblade knife][sword cane][pistol cane][blackjack][dagger][dirkknife][any other dangerous weapon]; and ¹
2. The defendant has previously been convicted of [a felony against the person or property of another] [a felony under the controlled drug statute of this State] [a felony under the controlled drug statute of any State, relating to controlled drugs as defined in the New Hampshire controlled drug statute]; and
3. The defendant acted knowingly.

These are the elements of the crime of felon in possession. Certain words in the definition need to be further defined.

“Knowingly” means [see definition of knowingly]

“Possession” means [see definition of possession.]

¹ If the defendant is charged with possession of a specific item named in this list, identify that item only, rather than reading the entire list. If the defendant is charged with possession of a specific item not included in the list, read the entire list to help the jury better understand the meaning of “or other dangerous weapon.”

PROTECTION FROM DOMESTIC VIOLENCE

RSA 173-B:9, III Violation of Protective Order

The defendant is charged with the crime of violating a protective order. The definition of the crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was subject to a temporary or permanent protective order issued under the authority of [RSA 173-B] [RSA 458:16] [the law of another state]¹ and
2. The defendant violated the order; and
3. The defendant acted knowingly.

These are the elements of the crime of violating a protective order. Certain words need to be defined:

“Knowingly” means [see definition of knowingly.]

¹ RSA 173-B:13 (requirements for enforceability of foreign order)

RSA 173-B:9, IV Crime of Abuse (Enhanced)

DRAFT

The defendant is charged with committing a crime involving abuse after having been previously convicted of a violation of a protective order. The definition of this crime has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [committed][attempted to commit] the crime of:

[Assault as defined in RSA 631:1 through 2-a]

[Reckless conduct as defined in RSA 631:3]

[Criminal threatening as defined in RSA 631:4]

[Sexual assault as defined in RSA 632-A:2 through 4]

[Interference with freedom as defined in RSA 633:1 through 3-a]

[Destruction of property as defined in RSA 634:1 and 2]

[Unauthorized entry as defined in RSA 635:1 and 2]

[Harassment as defined in RSA 644:1]; and ¹

2. The defendant was a family or household member, or a current or former spouse, sexual or intimate partner of the victim; and

3. The defendant's conduct in [committing][attempting to commit] the above crime constituted a credible threat to the victim's safety; and

4. The defendant acted [purposely][knowingly][recklessly]; and ²

5. Within 6 years of the date of this offense, the defendant [was convicted of] [completed a sentence following the conviction of] the crime of violating a protective order.

These are the elements of the crime called committing a crime involving abuse after having been previously convicted of a violation of a protective order. Certain words need to be further defined:

“Purposely” means [see definition of purposely];

“Knowingly” means [see definition of knowingly].

¹ See RSA 173 B: I, 1 a-g

² The statute is silent as to whether a mental state is required for elements 2 and 3, and, if so, whether it differs from the mental state required for the underlying crime.

“Recklessly” means [see definition of recklessly].

The State must also prove all of the elements of the crime of:

[Assault as defined in RSA 631:1 through 2-a]

[Reckless conduct as defined in RSA 631:3]

[Criminal threatening as defined in RSA 631:4]

[Sexual assault as defined in RSA 632-A:2 through 4]

[Interference with freedom as defined in RSA 633:1 through 3-a]

[Destruction of property as defined in RSA 634:1 and 2]

[Unauthorized entry as defined in RSA 635:1 and 2]

[Harassment as defined in RSA 644:1]

Thus the State must prove beyond a reasonable doubt that:

[insert elements of appropriate crime]

ALCOHOLIC BEVERAGES

DRAFT

~~RSA 179:5: Prohibited Sales~~

The defendant is charged with the crime of prohibited sales. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [sold][gave away][caused or allowed or procured to be sold, delivered or given away] any liquor or alcoholic beverage; and
2. The person to whom the defendant [sold][gave away][caused or allowed or procured to be sold, delivered or given away] any liquor or alcoholic beverage was [a person under the age of 21][an intoxicated individual]); and
3. The defendant acted knowingly.

These are the elements of the crime of prohibited sales. Certain words in the definition need to be further defined.

“Intoxicated” means a condition in which the mental or physical functioning of an individual is substantially impaired as a result of the presence of alcohol in the system.¹

“Knowingly” means [see definition of knowingly.]

¹ RSA 172-B:1, X.

DRIVERS LICENSES

RSA 263:64 Operating after Revocation or Suspension

DRAFT

The defendant is charged with the crime of operating after revocation or suspension. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant's driver's license had been revoked or suspended; and
2. During the period of revocation or suspension, the defendant drove a motor vehicle; and
3. The defendant drove in the State of New Hampshire; and
4. The defendant acted knowingly.

These are the elements of the crime of operating after revocation or suspension. Certain words in the definition need to be defined:

"Knowingly" means [see definition of knowingly.]

The period of revocation continues until a person takes affirmative steps to renew his license.¹

State v. Crotty, 134N.H. 706 (1991)

¹ *State v Callahan*, 126 N.H. 161 (1985); Refer to HB 310 (1986 session) to determine whether law has changed and subsequent amendments

DISOBEYING AN OFFICER

DRAFT

RSA 265:4, I (a), ~~Refusal on Request of Officer to Give Information~~

The defendant is charged with disobeying an officer. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. In his case, the State must prove that:

1. The defendant was the driver (or in charge) of the vehicle; and
2. The defendant refused when requested by a law enforcement officer to give his/her (name/address/date of birth/ and the name of the owner of such vehicle); and
3. The defendant acted knowingly.

DRAFT

RSA 265:4, I (b): Giving False Information to a Law Enforcement Officer

The defendant is charged with disobeying an officer. The definition of this crime has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus,, the State must prove:

1. The defendant was the drive (or was in charge) of the vehicle; and
2. The defendant gave a (false name/date of birth/address/name and address of the owner of such vehicle/or any other false information) to a law enforcement officer; and
3. That the false information would hinder the law enforcement officer from properly identifying the person in charge of the vehicle; and
4. The defendant acted knowingly.

DRAFT

RSA 265:4, I (c): Purposely Neglect to Stop (or Willful Attempt to Elude Pursuit

The defendant is charged with disobeying an officer. The definition of this crime has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove:

1. The defendant was the driver (or in charge) of a vehicle; and
2. The defendant was signaled by a law enforcement officer who (was in uniform) (displayed a badge conspicuously on the outside of an outer coat or garment) (used an authorized audible or visual emergency warning signal); and
3. The defendant (did not stop) or (attempted to elude pursuit by the law enforcement officer) by (increasing speed) (extinguishing headlamps while in motion) (abandoning the vehicle); and
4. As a result of the pursuit, there was a collision which resulted in a person other than the driver sustaining personal injury; and.
5. The defendant acted purposely.

DRAFT

RSA 265:4, I(d) Refusal to Sign Name

The defendant is charged with disobeying an officer. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove:

1. The defendant was the driver (or in charge) of a vehicle; and
2. The defendant refused, on demand of a law enforcement officer, to sign his/her name in the presence of such officer; and
3. The defendant acted knowingly.

RSA 265:4, I(c): Refusal to Provide License or Registration

DRAFT

The defendant is charged with disobeying an officer. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove:

1. The defendant was the driver (or in charge) of a vehicle; and
2. The defendant refused, on demand of a law enforcement officer, to (produce his/her drivers license) (or to produce his/her certificate of registration) (or to permit the officer to take the drivers license or certificate in hand for the purpose of examination); and
3. The defendant acted knowingly.

RSA 265:4, I(f) Refusal to Produce License, Registration or Number Plate After

DRAFT
Suspension or Revocation

The defendant is charged with disobeying an officer. The definition of this crime has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove:

1. The defendant was the driver (or in charge) of a vehicle; and
2. The defendant's drivers license, registration, certificate or title or number plate has been suspended or revoked; and
3. The defendant was requested to produce his/her license, registration or certificate of title by a (court or justice) (the Director of the Department of Motor Vehicle or an authorized employee of the department or other authorized representative of the director); and
4. The defendant refused to do so; and
5. The defendant acted knowingly.

RULES OF THE ROAD

DRAFT

RSA 265:82-a: Aggravated Driving while Under The Influence – Serious Bodily Injury

The defendant is charged with the crime of aggravated driving while under the influence of alcohol. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant drove a vehicle; and
2. This driving was on a way; and
3. The defendant was under the influence of intoxicating liquor; and
4. The defendant caused a collision resulting in serious bodily injury.

These are the elements of the crime of aggravated driving while under the influence of intoxicating liquor. Certain words in the definition need to be further defined.

“Drive” means to operate or be in actual physical control of a motor vehicle or OHRV.

“Vehicle” means every mechanical device, in, on, upon or by which any person or property is or may be transported or drawn upon a way, except devices used exclusively upon stationary rails or tracks.

“Way” means any public highway, street, road, alley, park, parking lot or parkway or any private way laid out under authority of statute and way provided and maintained by public institution to which state funds are appropriated for public use or any privately owned and maintained way open for public use.

“Under the influence” means a person has taken into his/her system a sufficient quantity of [intoxicating liquor] [or any controlled drug][or any combination of intoxicating liquor and controlled drug] so that his/her ability to operate a vehicle is impaired to any degree.

“Serious bodily injury” means any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or function of any part of the body.

RSA 265:82-a, I & II: Aggravated Driving While Intoxicated [Catchall]

DRAFT

The defendant is charged with the offense of aggravated driving while intoxicated. The definition of this has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [drove] [attempted to drive] a vehicle; and
2. The defendant was on a way; and
3. [The defendant was under the influence of intoxicating liquor or any controlled drug or any combination of intoxicating liquor and controlled drug] [the defendant had an alcohol concentration of 0.08 or more]¹.
4. [The defendant drove at a speed more than 30 miles per hour in excess of the prima facie limit] [the defendant caused a motor vehicle collision resulting in serious bodily injury] [the defendant attempted to elude pursuit by a law enforcement officer by increasing speed, extinguishing headlamps while still in motion, or abandoning a vehicle while being pursued].

These are the elements of aggravated driving while intoxicated. Certain words in the definition need to be further defined.

“Drive” means to operate or be in actual physical control of a motor vehicle or OHRV.

“Vehicle” means every mechanical device, in, on, upon or by which any person or property is or may be transported or drawn upon a way, except devices used exclusively upon stationary rails or tracks.

“Way” means any public highway, street, road, alley, park, parking lot or parkway or any private way laid out under authority of statute and way provided and maintained by public institution to which state funds are appropriated for public use or any privately owned and maintained way open for public use.

[“Under the influence” means a person has taken into [his][her] system a sufficient quantity of [intoxicating liquor][a controlled drug][any combination of intoxicating liquor and a controlled drug] so that [his][her] ability to operate a vehicle is impaired to any degree.]

[“Serious bodily injury” means any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or function of any part of the body.]

¹ RSA 259:3-b

RSA 265:82-a, III: Aggravated Driving While Intoxicated [0.16 BAC]

The defendant is charged with the offense of aggravated driving while intoxicated. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [drove] [attempted to drive] a vehicle; and
2. The defendant was on a way; and
3. The defendant had an alcohol concentration of 0.16 or more.¹

These are the elements of aggravated driving while intoxicated. Certain words in the definition need to be further defined.

“Drive” means to operate or be in actual physical control of a motor vehicle or OHRV.

“Vehicle” means every mechanical device, in, on, upon or by which any person or property is or may be transported or drawn upon a way, except devices used exclusively upon stationary rails or tracks.

“Way” means any public highway, street, road, alley, park, parking lot or parkway or any private way laid out under authority of statute and way provided and maintained by public institution to which state funds are appropriated for public use or any privately owned and maintained way open for public use.

¹ RSA 259:3-b.

RSA 265:82, I(a) Driving Under Influence of Intoxicating Liquor

The defendant is charged with the crime of driving [or attempting to drive] a vehicle upon a way while under the influence of [intoxicating liquor] [or any controlled drug] [or any combination of intoxicating liquor and controlled drug]. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was driving a vehicle and;
2. The defendant was driving on a way; and
3. The defendant, while so driving, was under the influence of [intoxicating liquor] [or any controlled drug][or any combination of intoxicating liquor and controlled drug].

These are the elements of the crime of driving under the influence of intoxicating liquor. Certain words in the definition need to be further defined.

“Drive” means to operate or be in actual physical control of a motor vehicle or OHRV.

“Vehicle” means every mechanical device, in, on, upon or by which any person or property is or may be transported or drawn upon a way, except devices used exclusively upon stationary rails or tracks.

“Way” means any public highway, street, road, alley, park, parking lot or parkway or any private way laid out under authority of statute and way provided and maintained by public institution to which state funds are appropriated for public use or any privately owned and maintained way open for public use.

“Under the influence” means a person has taken into his/her system a sufficient quantity of [intoxicating liquor] [or any controlled drug][or any combination of intoxicating liquor and controlled drug] so that his/her ability to operate a vehicle is impaired to any degree.

RSA 265:82, I(b) Driving with excess alcohol concentration

DRAFT

The defendant is charged with driving (or attempting to drive) a vehicle upon a way while having an alcohol concentration of .08 or more. The definition of this crime has two parts or elements. The state must prove each element beyond a reasonable doubt. Thus,, the state must prove that:

1. The defendant was driving (or attempting to drive) a vehicle on a way and
2. The defendant while so driving had an alcohol concentration of .08 or more.¹

These are the elements of the crime of driving with excess alcohol concentration. Certain words in the definition need to be further defined.¹

“Drive” means to operate or be in actual physical control of a vehicle.

“Vehicle” means every mechanical device, in, on , upon or by which any person or property is or may be transported or drawn upon a way, except devices used exclusively upon stationary rails or tracks.

“Way” is any public highway, street, road, alley, park, parking lot or parkway or any private way laid out under authority of statute and way provided and maintained by public institution to which state funds are appropriated for public use or any privately owned and maintained way open for public use.

¹ The excess concentration in the case of a person under the age of 21 is .02 or more.

RSA 265:93-b I Driving a Motor Vehicle Not Equipped with an Alcohol Ignition Interlock Device

DRAFT

The defendant is charged with the offence of driving a motor vehicle not equipped with an alcohol ignition interlock device. The definition of this crime has three parts or elements. The State must prove each part or element beyond a reasonable doubt. Thus, the State must prove:

1. The defendant was required by a court to drive only a motor vehicle equipped with an alcohol ignition interlock device; and
2. The defendant drove a motor vehicle not equipped with an alcohol ignition interlock device; and
3. The defendant acted knowingly.

These are the elements of the crime of driving a motor vehicle not equipped with an alcohol ignition interlock device. Certain words in the definition need to be further defined:

“Drive” means to operate or be in actual physical control of a motor vehicle or OHRV.

“Motor vehicle” means any self propelled vehicle not operated exclusively on stationary tracks.

“Knowingly” means [see definition of knowingly].

RSA 265:93-b II – Tampering with the Operation of an Ignition Interlock Device

DRAFT

The defendant is charged with the offense of tampering with (or attempting in any way to circumvent) the operation of an ignition interlock device installed in a motor vehicle. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant tampered with (or in any way attempted to circumvent) the operation of an ignition interlock device installed in a motor vehicle; and
2. The defendant acted knowingly.

These are the elements of tampering with the operation of an ignition interlock device. Certain words in the definition need to be further defined.

“Motor vehicle” means any self propelled vehicle not operated exclusively on stationary tracks.

“Knowingly” means [see definition of knowingly].

RSA 265:93-b III Starting a Motor Vehicle Equipped with an Ignition Interlock Device to Provide a Vehicle for a Person who is Restricted to Drive on a Vehicle so Equipped

DRAFT

The defendant is charge with the offense of starting [or attempting to start] a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is restricted by law to drive only a motor vehicle so equipped. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove:

1. The defendant started (or attempted to start) a motor vehicle equipped with an ignition interlock device; and
2. The defendant's purpose was to provide an operable motor vehicle to a person restricted by law to drive only a motor vehicle so equipped.

These are the elements of the crime of starting (or attempting to start) a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person who is restricted by law to drive only a motor vehicle so equipped. Certain words in the definition need to be further defined:

Motor vehicle" means any self propelled vehicle not operated exclusively on stationary tracks.

"Purposely" means [see definition of purposely]. The defendant does not act purposely if the defendant acted only with the purpose of providing safety or mechanical repair to the device or the vehicle and the person subject to the court order did not drive the vehicle.

RSA 265:93-b IV Providing a Motor Vehicle not Equipped with a Functional Ignition Device to Another Person Sentenced to Drive Only Such a Vehicle

DRAFT

The defendant is charged with the offense of providing a motor vehicle not equipped with a functional ignition device to another person who was sentenced to drive only such a motor vehicle. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that ;

1. The defendant provided a motor vehicle not equipped with a functional ignition device to another person; and
2. The other person had been sentenced to drive only a vehicle equipped with a functional ignition device; and
3. The defendant acted knowingly.

These are the elements of the crime of providing a motor vehicle not equipped with a functional ignition device to another person who was sentenced to drive only such a motor vehicle. Certain words in the definition need to be further defined:

Motor vehicle” means any self propelled vehicle not operated exclusively on stationary tracks.

“Knowingly” means [see definition of knowingly].

CONTROLLED DRUG ACT

RSA 318-B:2, I [Possess], [Have Under His/Her Control], [A Controlled Drug], [A Controlled Drug Analog], Or [A Preparation Containing A Controlled Drug]

DRAFT

The defendant is charged with the crime of [possessing], [having under his/her control], [a controlled drug], [a controlled drug analog] or [a preparation containing a controlled drug]. The definition of this offense has four parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant [possessed], [had under his/her control] a substance; and
2. The substance was the [controlled drug] [the controlled drug analog] or [a preparation containing the controlled drug] [insert drug alleged in the charging document]; and
3. The defendant knew the substance was the [controlled drug] [the controlled drug analog] or [a preparation containing the controlled drug] [insert drug alleged in the charging document]; and
4. The defendant acted knowingly.

Certain words in the definition need to be defined:

“Possession” A person possesses an item when he/she has it in his/her physical custody and exercises dominion and control over it. Possession can be actual or constructive. Actual possession is when a person has direct physical control over the item. Constructive possession is the power to determine the use or disposition of the item. In either case, the State must prove that:

1. The defendant knew the location of the item; and
2. The defendant knew the nature of the item; and
3. The defendant has custody of the item in the sense that it was in a place where it was under his/her control.

In the case of constructive possession, mere access to the item is insufficient, as is mere presence in the location where the item is found. The defendant must have the power to control the item. Constructive possession can be inferred from all the evidence presented, including any incriminating statements or any other circumstances linking the defendant to the item. Furthermore, constructive possession of the item need not be exclusive; the item can be possessed jointly with another.¹

“Knowingly” - (see definition of knowingly)

¹ See *State v. Smalley*, 138 N.H. 66 (2002); *State v Haycock*, 136 N.H. 361 (1992); *State v. Ward*, 134 N.H. 626 (1991)

RSA 318-B:2, I Manufacture [A Controlled Drug], [A Controlled Drug Analog], Or [A Preparation Containing A Controlled Drug]

DRAFT

The defendant is charged with the crime of manufacturing [a controlled drug], [a controlled drug analog] or [a preparation containing a controlled drug]. The definition of this offense has four parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant manufactured a substance; and
2. The substance was the [controlled drug] [the controlled drug analog] or [a preparation containing the controlled drug] [insert drug alleged in the charging document];and
3. The defendant knew the substance was the [controlled drug] [the controlled drug analog] or [a preparation containing the controlled drug] [insert drug alleged in the charging document]; and
4. The defendant acted knowingly

Certain words in the definition need to be defined:

“Manufacturer” means a person who, by compounding, mixing, cultivating, growing or other process, produces or prepares controlled drugs, but shall not mean a pharmacist who compounds controlled drugs to be sold or dispensed on prescription.

“Knowingly” – see definition of knowingly.

RSA 318-B:2, I [Purchase], [Prescribe], [Administer] [Transport] [A Controlled Drug], [A Controlled Drug Analog], Or [A Preparation Containing A Controlled Drug]

The defendant is charged with the crime of [purchasing], [prescribing] or [administering] a controlled drug, [a controlled drug analog] or [a preparation containing a controlled drug]. The definition of this offense has four parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant possessed, [purchased], [prescribed] or [administered] a substance;
2. The substance was the [controlled drug] [the controlled drug analog] or [a preparation containing the controlled drug] [insert drug alleged in the charging document]; and
3. The defendant knew the substance was the [controlled drug] [the controlled drug analog] or [a preparation containing the controlled drug] [insert drug alleged in the charging document]; and
4. The defendant acted knowingly

Certain words in the definition need to be further defined:

“Prescribe” means order or designate a remedy or any preparation containing controlled drugs.

“Administer” means to act whereby a single dose of a drug is instilled into the body of or given to a person or animal for immediate consumption or use.

“Knowingly” – means (see definition of knowingly.)

**RSA 318-B:2, I Sale of [A Controlled Drug][A Controlled Drug Analog][Any Preparation Con-
taining a Controlled Drug]**

DRAFT

The defendant is charged with the crime of sale of a [controlled drug] [a controlled drug analog] [any preparation containing a controlled drug]. The definition of this offense has four parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant sold a substance to another; and
2. The defendant knew that the substance was the [controlled drug] [the controlled drug analog] [a preparation containing the controlled drug,] (insert drug alleged in charging document); and
3. The amount of the controlled drug was [], including any adulterants or dilutants; and
4. The defendant acted knowingly.

Certain words in the definition need to be defined:

“Sale” is defined by statute to mean barter, exchange or gift, or offer therefor, and each such transaction made by any person whether as principal, proprietor, agent, servant, or employee. The State does not have to prove that the defendant made any profit, received any money or consideration, or that any money changed hands. Rather, the sale of a controlled drug is committed by the transfer or distribution of the drug from one person to another.

“Knowingly” see definition of knowingly.

**RSA 318-B:2, I [Possession] [Transportation] Of A [Controlled Drug][Controlled Drug Analog]
[A Preparation Containing a Controlled Drug] With Intent To [Sell] [Dispense] [Compound]**

DRAFT

The defendant is charged with the crime of [possession] [transportation] of a [controlled drug] [a controlled drug analog] [a preparation containing a controlled drug] with the intent to [sell] [dispense] or [compound]. The definition of this offense has six parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant [possessed] [transported] a substance; and
2. The substance was [the controlled drug] [the controlled drug analog] [a preparation containing the controlled drug] [insert drug alleged in the charging document]; and
3. The defendant knew the substance was [the controlled drug] [the controlled drug analog] [a preparation containing the controlled drug] [insert drug alleged in the charging document]; and
4. The quantity of the drug was [insert quantity alleged in the charging document], including any adulterants or dilutants; and
5. The defendant had the intent to [sell] [dispense] [compound] this drug; and,
6. The defendant acted knowingly.

Certain words in the definition need to be further defined:

“Possession” A person possesses an item when he/she has it in his/her physical custody and exercises dominion and control over it. Possession can be actual or constructive. Actual possession is when a person has direct physical control over the item. Constructive possession is the power to determine the use or disposition of the item. In either case, the State must prove that:

1. The defendant knew the location of the item; and
2. The defendant knew the nature of the item; and
3. The defendant has custody of the item in the sense that it was in a place where it was under his/her control.

In the case of constructive possession, mere access to the item is insufficient, as is mere presence in the location where the item is found. The defendant must have the power to control the item. Constructive possession can be inferred from all the evidence presented, including any incriminating statements or any other circumstances linking the defendant to the item. Furthermore,

constructive possession of the item need not be exclusive; the item can be possessed jointly with another.¹

“Sale” means barter, exchange, or gift, or an offer therefore, and each such transaction make by an person whether as a principal, proprietor, agent, servant, or employee. The state does not have to prove that the defendant intended to sell the controlled drug for profit or in exchange for money. Rather, the state is only required to proved that the defendant intended to transfer this drug to another person

“Dispense” means to distribute, leave with, give away, dispose of, deliver, or sell one or more doses of a medication, and shall include the transfer of more than a single dose of a medication from one container to another and the labeling or otherwise identifying a container holding more than a single dose of a drug.

“Compound” means to combine two or more substances.

“Knowingly” means see definition of knowingly.

¹ See *State v. Smalley*, 138 N.H. 66 (2002); *State v Haycock*, 136 N.H. 361 (1992); *State v. Ward*, 134 N.H. 626 (1991)

RSA 318-B:2,XII Drug Enterprise Leader

The defendant is charged with the crime of drug enterprise leader. The definition of this offense has six parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant conspired with one or more persons; and
2. The conspiracy was engaged in for profit; and
3. The conspiracy involved a scheme or course of conduct; and
4. This scheme or course of conduct involved the commission of one or more of the following violations of New Hampshire's Controlled Drug Act:- to unlawfully [manufacture] [sell] [prescribe][administer] [dispense] or [bring with or transport in this state] the controlled drug [methamphetamine], [lysergic acid diethylamide (LSD)], [phencyclidine (PCP)] [any controlled drug classified in schedule I or II], or [any controlled drug analog thereof];and
5. The defendant acted as an [organizer], [supervisor], [financier], or [manager] of one or more of the people in the conspiracy; and
6. The defendant acted purposely.

These are the elements of the crime of drug enterprise leader. Certain words in the definition need to be further defined.

“Conspiracy” means [see instruction].

“Engaged in for profit.” means money earned in excess of the expenses of the project. It is not necessary for the State to prove that the conspirators actually made a profit, but that the purpose of the conspiracy was to make a profit. To find the defendant guilty of the Drug Enterprise Leader charge you must find beyond a reasonable doubt that the defendant engaged in the scheme or course of conduct for profit.

“Scheme or course of conduct.” A “scheme or course of conduct” means two or more acts over a period of time, however short, which evidences a continuity of purpose.

“Organizer”, “supervisor”, “financier”, or “manager” should be given their ordinary meaning. To be an organizer means to be one who organizes, or in other words, one who arranges and/or coordinates the acts of others by planning and effort. To be a supervisor means one who oversees or directs the work of others. To be a financier means to be one who provides money to initiate a project or sells a product on credit, allowing the purchaser to pay him/her back once it has sold the product. To be a manager means one who directs the work of others.

Often, an “organizer,” “supervisor,” or “manager” is one who gives orders or directions to another who carries them out. However, a person need not have control over the individuals he is said to have “organized,” “supervised,” or “managed.” Moreover, an “organizer,” “supervisor,” or “manager” need not be the only or even the dominant organizer, supervisor or manager of a conspiracy; the statute requires only that the defendant maintained such a role with one or more persons. So, if a defendant, for example, personally hires a foreman, that defendant is still responsible for organiz-

ing the individuals hired by the foreman to work as the crew. Finally, the same type of supervision need not be exercised over each of the persons organized, supervised or managed.

Often a financier will supply monies for a project worked on by many others and will share the proceeds of that work with those involved. Also one can be a financier if one provides a product on credit, that is, payment is delayed for a period of time while the product is sold.

“Manufacture” means compounding, mixing, cultivating, growing or other process to produce or prepare controlled drugs.¹

“Sale” means barter, exchange or gift, or offer therefore, and each such transaction made by any person whether as principal, proprietor, agent, servant, or employee.² The State does not have to prove that the defendant made any profit, received any money or consideration, or that any money changed hands. Rather, the sale of a controlled drug is committed by the transfer or distribution of the drug from one person to another.

“Prescribe” means to order or designate a remedy or any preparation containing controlled drugs.³

“Administer” means an act whereby a single dose of a drug is instilled into the body of or given to a person or animal for immediate consumption or use.⁴

“Dispense” means to distribute, leave with, give away, dispose of, deliver, or sell one or more doses of and shall include the transfer of more than a single dose of a medication from one container to another and the labeling or otherwise identifying a container holding more than a single dose of a drug.⁵

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly].

¹ NH RSA 318- B:1, XV

² NH RSA 318- B:1, XXX

³ NH RSA 318- B:1, XXVII

⁴ NH RSA 318- B:1, I-a

⁵ NH RSA 318- B:1, VIII

INCHOATE CRIMES

RSA 629:1 Attempt

DRAFT

The defendant is charged with the crime of attempted [insert substantive offense.] The definition of this offense has parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant had the purpose to commit the offense of [substantive offense]; and
2. The defendant took a substantial step toward the commission of the crime.

[Renunciation is an affirmative defense to the crime of attempt. The defendant bears the burden of proving renunciation by a preponderance of the evidence. To establish this defense, the defendant must prove that it is more likely than not that s/he voluntarily renounced his/her criminal purpose by abandoning his/her effort to commit the crime of [substantive offense] or by otherwise preventing the commission of the crime under circumstances that manifest the defendant's complete withdrawal of his/her criminal purpose.]

A renunciation is not "voluntary" if it is substantially motivated by circumstances the defendant was not at first aware of which increase the probability of his/her detection or which make more difficult the commission of the crime. Renunciation is not complete if the purpose is to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.]

These are the elements of the crime of attempt. Certain words need to be defined:

"Substantial step" means conduct that is strongly corroborative of the defendant's purpose to commit the offense of [substantive offense.] Such conduct may consist of either an act or an omission to act. The defendant's conduct must be more than mere preparation to commit the crime.

You should consider whether under the circumstances as the defendant believed them to be, the defendant's act or omission to act constituted a substantial step towards the commission of the crime.

The crime of [substantive offense] is defined as follows:¹

¹ The intended offense should be defined as appropriate to the case. See State v Johnson, 144 N.H. 175 (1999); State v Hutchinson, 137 N.H. 591 (1993)

RSA 629:2 Criminal Solicitation

The defendant is charged with the crime of criminal solicitation. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that

1. The defendant commanded, solicited or requested that [another person] engaged in conduct which would constitute the crime of [substantive offense]; and
2. The defendant made such command, solicitation or request with the purpose that the crime of [substantive offense] be committed by the other person.

The State is not required to prove that the person solicited actually would have committed the crime. Nor is it a defense that the person solicited would be immune from liability for engaging in the criminal conduct by virtue of irresponsibility, incapacity or exemption.

[Renunciation is an affirmative defense to criminal solicitation. The defendant bears the burden of proving renunciation by a preponderance of the evidence. To establish this defense, the defendant must prove that it is more probable than not that s/he renounced his/her criminal purpose by persuading the other person not to commit [substantive offense] or by otherwise preventing the commission of the [substantive offense] under circumstances which manifest the defendant's purpose that the crime not occur.]

Those are the elements of the crime of criminal solicitation. Certain words need to be defined:

The crime of [substantive offense] is defined as follows:¹

¹ The intended offense should be defined as appropriate to the case. See State v Johnson, 144 N.H. 175 (1999); State v Hutchinson, 137 N.H. 591 (1993)

RSA 629:3 Conspiracy

DRAFT

The defendant is charged with the crime of conspiracy to [state crime as alleged in the indictment.] The definition of this offense has four parts or elements. The state must prove each element beyond a reasonable doubt. Therefore, the state must prove that:

1. The defendant agreed with another person to commit or cause the commission of [state crime as alleged in the indictment];
2. The defendant entered into this agreement;
3. During the existence of the conspiracy, one of its members committed an overt act alleged in the indictment;
4. This overt act was committed in furtherance of the conspiracy.

Certain words in the definition need to be further defined:

“Agreement” – The essence of the crime of conspiracy is an agreement by two or more people to commit a crime. Under the law, such an agreement is itself a criminal offense, provided that one of the conspirators commits at least one overt act in furtherance of the agreement. The State does not have to prove that there was an explicit oral or written understanding between the conspirators; it may be an unspoken or non-verbal mutual understanding between the conspirators to cooperate in the commission of the crime. The State does not have to prove that all the people who were members of the conspiracy knew about or agreed to all of the details of the conspiracy or that each member of the conspiracy knew the identity of or the role played by every other member of the conspiracy. However, it is not enough that the people simply met, discussed matters of common interest or acted in similar ways. You must find that the defendant was a part of a joint plan to commit the crime of [state crime as alleged in the indictment.]

Since direct evidence of a conspiracy is often difficult to obtain, the existence of a conspiracy frequently must be proved by circumstantial evidence. The very essence of the crime is secrecy and concealment. Accordingly, in deciding whether the defendant entered into an agreement to bring about the crime of [state crime as alleged in the indictment] you may consider all the facts and circumstances in evidence including inferences drawn from the course of conduct of the conspirators. A defendant who joins an existing conspiracy adopts the prior acts of the other conspirators. You may consider the coconspirators earlier acts and statements made in furtherance of the conspiracy as evidence against the defendant.¹

While the defendant must have joined the conspiracy with the specific intent to commit the crime of [state crime as alleged in the indictment] to be found guilty, the State need not prove that such objective was in fact accomplished.

¹ The NH Supreme Court has not considered the scope of conspiratorial liability however the US Supreme Court has adopted the definition set forth above. See Pinkerton v US 328 US 640 1946

“Overt act” – In order to sustain its burden of proof, the State must prove beyond a reasonable doubt that during the existence of the conspiracy one of the members performed at least one of the overt acts alleged in the indictment. The overt act need not in itself be a criminal act. It may be a transaction or event that is entirely innocent when considered alone and provided that it was committed in an effort to accomplish the object of the conspiracy and during the existence of the conspiracy.

Thus, the State has alleged [] overt acts in the indictment against the defendant. [read the overt acts]

The State needs to prove only one of the overt acts in order to prove the defendant guilty of conspiracy to commit [state crime as alleged in the indictment.]² The State need not prove that the defendant personally committed or knew of the overt act. Once you have decided that the defendant was a member of the conspiracy, the defendant is responsible for what other conspirators did to carry out the object of the conspiracy, whether or not the defendant knew what they did.

The defendant is charged with conspiracy to commit the crime of [].

The definition of the crime of [] is [read definition of crime alleged.]

“Purposely” – see definition of purposely.

² The NH Supreme Court has not decided whether there must be jury unanimity as to which overt act was committed. See *State v Gonzales* 143 NH 693, 703-04 1999

HOMICIDE

RSA 630:1.I(a) Capital Murder **DRAFT**

The defendant is charged with the crime of capital murder. The definition of this crime has 3 parts, or elements. The state must prove each element beyond a reasonable doubt. Thus, the State must prove that:

- 1.The defendant caused the death of a (law enforcement) (judicial) officer; and
- 2.When his/her death was caused, the (law enforcement) (judicial) officer was acting in the line of duty;

OR

- 1.The defendant caused the death in retaliation for the (law enforcement) (judicial) officer's actions in the line of duty; and
- 2.The defendant acted knowingly.

These are the elements of capital murder. Certain words in the definition need to be further defined:

A "law enforcement officer" is a police officer, sheriff or deputy sheriff, an official or employee of any prison, jail or corrections institution, a probation/parole officer or conservation officer.

A "judicial officer" is a judge, a prosecuting attorney employed by a county or municipality, or an attorney employed by the department of justice.

"Knowingly" means .[see definition of knowingly].

RSA 630:1, I(b) (e) (f) Capital Murder

The defendant is charged with the crime of capital murder. The definition of this crime has three parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

DRAFT

- 1.The defendant caused the death of another; and
- 2.The defendant caused the death before, after, or while engaged in committing or attempting to commit the crime of [kidnapping][aggravated felonious sexual assault][a violation of RSA 318-B:26, I(a) or (b)]; and
- 3.The defendant acted knowingly.

These are the elements of capital murder. You must also find that the defendant committed the crime of. [kidnapping][aggravated felonious sexual assault][a violation of RSA 318-B:26, I(a) or (b)]. The elements of these crimes are listed in their corresponding instructions. Certain other words in the definition need to be further defined:

“Knowingly” means[see definition of knowingly].

RSA 630:1,I(d)Capital Murder

The defendant is charged with the crime of capital murder. The definition of this crime has three parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

DRAFT

1. The defendant caused the death of another; and
2. The defendant did so after having been sentenced to life without parole for the crime of first degree murder; and
3. The defendant acted knowingly.

These are the elements of the crime of capital murder. Certain words in this definition need to be further defined.

“Knowingly” means [see definition of knowingly].

RSA 630:1-a, I(a) First degree murder

DRAFT

The defendant is charged with the crime of first degree murder. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another; and¹
2. The defendant did so purposely; and
3. The defendant's act or acts in furtherance of his/her purpose were premeditated and deliberate.

These are the elements of first degree murder. Certain words in the definition need to be further defined:

For purposes of the crime of first degree murder, to act "purposely" means that the defendant acted with the conscious object of bringing about the death of [insert name of victim]. It is not sufficient to find that the defendant knew his/her actions would cause death; the defendant must have wanted, or specifically intended, to cause death.

To act with premeditation and deliberation means that there must not be only an intention to kill; there must also be a deliberate and premeditated design to kill. Such design must precede the killing by some space of time, but the time need not be long. It must be a sufficient time for some reflection and consideration upon the choice to kill or not to kill and for the formation of a definite purpose to kill. If the time is sufficient for this, it does not matter how brief it is. However, a killing that is done upon sudden impulse is not premeditated or deliberate.

Whether a deliberate and premeditated design to kill was formed by the defendant must be determined from all the circumstances of the case, including the character of weapon employed, the force and number of blows inflicted, the location and severity of the wounds, the place of the crime, any previous statements or conduct of the defendant indicating preparation or motive, any subsequent acts or statements of the defendant indicating his/her state of mind, and every other circumstance having a legitimate bearing upon the subject²

¹ If appropriate, give causation instruction.

² State v. Greenleaf, 71 N.H. 696 (1902); State v. Sadvari, 123 N.H. 410 (1983); State v. Hamel, 123 N.H. 670 (1983); State v. Shackford, 127 N.H. 695 (1986); State v. Sullivan, 131 N.H. 209 (1988); State v. Herrick, 133 N.H. 694 (1990); State v. Patten, 148 N.H. 659 (2002).

RSA 630:1-a, I (b) (1) First Degree Murder

The defendant is charged with the crime of first degree murder. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another;¹ and
2. The defendant caused the death before, after, or while engaged in the commission of, or while attempting to commit² the crime of felonious sexual assault; and
- 3, The defendant acted knowingly.

These are the elements of first degree murder. Certain words in the definition need to be further defined:

“Felonious sexual assault” means [see definition of felonious sexual assault].

“Knowingly” means [see definition of knowingly].

¹ If appropriate, give causation instruction

² If appropriate, give attempt instruction

RSA 630:1-a, I(b)(2) First Degree Murder

The defendant is charged with crime of first degree murder. The definition of this crime has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another; and
2. The defendant did so before, after, while engaged in the commission of, or while attempting to commit the crime of [robbery] [burglary] while armed with a deadly weapon; and
3. The death was caused by the use of the deadly weapon; and
4. The defendant acted knowingly.

These are the elements of first degree murder. You must also find that the defendant committed or attempted to commit the crime of [robbery] [burglary] while armed with a deadly weapon. The elements of this crime are [see definition of [robbery] [burglary]]. Certain words must be further defined:

A “deadly weapon” is [see definition].

“Knowingly” means [see definition of knowingly].

RSA 630:1-a, I(b)(3) First Degree Murder

The defendant is charged with the crime of first degree murder. The definition of this crime has three parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another; and
2. The defendant did so while committing or attempting to commit arson; and
3. The defendant acted knowingly.

These are the elements of first degree murder. Certain words must be further defined

“Knowingly” means [see definition of knowingly].

You must also find that the defendant committed or attempted to commit the crime of arson. The elements of the crime of arson are {insert definition}.

RSA 630:1-a, I (b)(4) First Degree Murder

DRAFT

The defendant is charged with the crime of first degree murder. The definition of this crime has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another; and
2. The person whose death the defendant caused was the [president of the United States] [vice-president of the United States][president-elect of the United States][vice-president-elect of the United States][governor of any State][governor-elect of any State][member of the congress of the United States][member-elect of the congress of the United States][candidate for president, vice-president, governor, or member of congress who had been nominated at his/her party's primary]; and
3. The defendant was motivated by his/her knowledge of the victim's position or status; and
4. The defendant acted knowingly.

These are the elements of first degree murder. Certain words need to be further defined:

“Knowingly” means [see definition of knowingly].

RSA 630:1-b, 1(a) Second Degree Murder (Knowingly)

The defendant is charged with the crime of second degree murder. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another,¹ and
2. The defendant acted knowingly.

These are the elements of the crime of second degree murder. Certain words in the definition need to be defined:

“Knowingly” means [see definition of knowingly.]

¹ Use causation instruction when appropriate.

RSA 630:1-b,I(b) Second Degree Murder (Recklessly W/Extreme Indifference)

The defendant is charged with the crime of second degree murder. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another,¹ and
2. . The defendant acted recklessly under circumstances showing an extreme indifference to the value of human life.

These are the elements of the crime of second degree murder. Certain words in the definition need to be defined:

“Recklessly” means [see definition of recklessly.]

For a killing to be second degree murder, the defendant must not simply act recklessly, but rather must act recklessly under circumstances showing an extreme indifference to the value of human life. This means something more than merely being aware of and consciously disregarding a substantial and unjustifiable risk of death. The risk involved and the disregard must be so blatant as to manifest extreme indifference to the value of human life.² [You may presume the recklessness and extreme indifference required for the crime of second degree murder under this definition if you find that the defendant used a deadly weapon while committing or attempting to commit [or in immediate flight after committing or attempting to commit] [insert alleged class A felony and incorporate instruction]].

¹ Use causation instruction when appropriate.

² *State v Schultz*, 141 N.H.101,105(1996); *State v Dufield*, 131 N.H.35 (1988); *State v Howland*, 119 N.H. 413, (1979)

RSA 630:2, I (a) Manslaughter (Provocation)¹

The defendant is charged with the crime of manslaughter. The definition of this crime has two parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another; and
2. The defendant acted under the influence of extreme mental or emotional disturbance caused by extreme provocation; and
3. The way in which the defendant caused the death would otherwise constitute murder.

Certain words in this definition need to be further defined:

In deciding whether the defendant acted under the influence of extreme mental or emotional disturbance caused by extreme provocation you must find that the provocation was sufficient to cause a reasonable person to kill another out of passion. To constitute sufficient provocation under the law, you must find that the acts of the victim were unlawful; lawful acts, even if they involve physical violence, are not recognized in the law as sufficient provocation to kill another.²

¹ This instruction will normally be given in a case where the defendant is charged with murder, and the facts give rise to a possibility that the charge may be mitigated to provocation manslaughter. Although the jury should deliberate on the murder charge first, provocation manslaughter is not a lesser-included offense of murder and should not be treated as such. State v. Taylor, 141 N.H.89 (1996); cf. State v. Schultz, 141 N.H. 101 (1996).

² State v. Smith, 123 N.H. 46 (1983); State v. Little, 123 N.H 33 (1983).

RSA 630:2, I (b) Manslaughter (Reckless)

The defendant is charged with the crime of manslaughter. The definition of this crime has two parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

DRAFT

1. The defendant caused the death of another; and¹
2. The defendant acted recklessly.

This is the definition of the crime of manslaughter. Certain words need to be further defined:

“Recklessly” means [see instruction for recklessly].

¹ If appropriate, insert causation instruction

RSA 630:3 Negligent Homicide (General)

The defendant is charged with the crime of negligent homicide. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another person; and
2. The defendant acted negligently.

These are the elements of the crime of negligent homicide. Certain words need to be defined further:

“To cause the death of another” means that the death of another person was the direct result of the defendant’s actions.¹

“Negligently” means [see definition of negligently.]

¹ Where intervening cause may be an issue, see causation instruction.

RSA 630:3 Negligent Homicide (DWI)

The defendant is charged with the crime of negligent homicide. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused the death of another person; and
2. The death of the victim resulted from the defendant's operation of a [propelled vehicle][boat] while under the influence of intoxicating liquor or a controlled drug or any combination thereof¹.

¹ See *State v. Wong*, 125 N.H. 610 (1984) (Recognizing legislative determination that operating under the influence is negligent per se.

DRAFT **RSA 630:4 Causing or Aiding Suicide**

The defendant is charged with the crime of causing or aiding suicide. The definition of this crime has [two][three] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

- .1. The defendant [aided another in committing][solicited another to commit] suicide;
and
- [2. The defendant's conduct caused the [attempted] suicide; and]¹
3. The defendant acted purposely.

These are the elements of the crime of causing or aiding suicide. Certain words in the definition need to be further defined:

“Purposely” means [see definition of purposely.]

¹ Insert when felony causing or aiding suicide is charged.

ASSAULT AND RELATED OFFENSES

RSA 631:1, (I) (a) First Degree Assault

DRAFT

The defendant is charged with first degree assault. The definition of the crime of first degree assault has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused serious bodily injury to another person; and
2. The defendant acted purposely.

These are the elements of the crime of first degree assault. Certain words in the definition need to be defined:

"Serious bodily injury" means . . . [see RSA 625:11, VI]..

"Purposely" means . [see instruction on purposely].

RSA 631:1 (I) (b) First Degree Assault

The defendant is charged with first degree assault. The definition of the crime of first degree assault has [three] or [four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant caused bodily injury to another person; and
2. The bodily injury was caused by the defendant's use of a deadly weapon ; and
- [3. The deadly weapon was a firearm.]; and
- [3] [4]. The defendant acted [purposely] [knowingly].

These are the elements of the crime of first degree assault. Certain words in the definition need to be defined:

"Deadly weapon" means any firearm, knife or other substance or thing which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury.¹

"Firearm" means a weapon capable of discharging a shot by means of gunpowder. ²

"Purposely" means [see definition of purposely].

"Knowingly" means [see definition of knowingly].

¹ RSA 625:11, V

² *State v. Beaudette*, 124 N.H. 579, 581 (1984); *State v. Taylor*, 135 N.H. 131, 133 (1992); *State v. Hatt*, 144 N.H. 246, (1999).

RSA 631:1 (I) (c) First Degree Assault

The defendant is charged with first degree assault. The definition of the crime of first degree assault has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant caused injury to another person; and
2. The injury resulted in [miscarriage] [stillbirth]; and
3. The defendant acted [purposely] [knowingly.]

These are the elements of the crime of first degree assault. Certain words in the definition need to be further defined:

"Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus.¹

"Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion².

"Purposely" means [see instruction for purposely].

"Knowingly" means [see instruction for knowingly].

¹ RSA 631:1, II (a)

² RSA 631:1, II (b)

RSA 631:1 (I) (d) First Degree Assault

The defendant is charged with first degree assault. The definition of the crime of first degree assault has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant caused serious bodily injury to another person; and
2. The injured person was under thirteen years of age; and
3. The defendant acted [knowingly] [recklessly].

These are the elements of the crime of first degree assault. Certain words in the definition need to be further defined:

"Serious bodily injury" means [see RSA 625:11, VI]

"Knowingly" means [see instruction for knowingly].

"Recklessly" means [see instruction for recklessly].

RSA 631:2(I) (a) Second Degree Assault -

The defendant is charged with second degree assault. The definition of the crime of second degree assault has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant caused serious bodily injury to another person; and
2. The defendant acted [recklessly] [knowingly].

These are the elements of the crime of second degree assault. Certain words in the definition need to be further defined:

"Serious bodily injury" means [see RSA 625:11, VI].

"Recklessly" means [see instruction for recklessly].

"Knowingly" means [see instruction for knowingly].

RSA 631:2(I) (b) Second Degree Assault

The defendant is charged with second degree assault. The definition of the crime of second degree assault has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant caused bodily injury to another person; and
2. The bodily injury was caused by means of a deadly weapon; and
3. The defendant acted recklessly.

These are the elements of the crime of second degree assault. Certain words in the definition need to be further defined:

"Deadly weapon" means any firearm, knife or other substance or thing which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury.¹

"Firearm" means a weapon capable of discharging a shot by means of gunpowder.²

"Recklessly" means [see definition for recklessly].

¹ RSA 625:11, V

² *State v. Beaudette*, 124 N.H. 579, 581 (1984); *State v. Taylor*, 135 N.H. 131, 133 (1992); *State v. Hatt* 144 N.H. 246 (1999).

RSA 631:2(I) (c) Second Degree Assault

The defendant is charged with second degree assault. The definition of the crime of second degree assault has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant caused bodily injury to another person; and
2. The bodily injury was inflicted under circumstances manifesting extreme indifference to the value of human life; and
3. The defendant acted recklessly.

These are the elements of the crime of second degree assault. Certain words in the definition need to be defined:

"Recklessly" means [See definition for recklessly].

To act "under circumstances manifesting extreme indifference to the value of human life" means that the defendant's acts demonstrate a blatant disregard for the risk to the victim's life. It is not necessary that the injury or series of injuries themselves be life threatening.¹

¹ *State v. Bailey*, 127 N.H. 416, 423 (1985); *State v. Fletcher*, 129 N.H. 641, 644 (1987); *State v. Saucier*, 128 N.H. 291, 297 (1986); See also Report of Commission to Recommend Codification of Criminal Laws 576:3 comment at 43 (1969) (Paragraph [I(c)] also requires only bodily injury of any degree and the justification for permitting slight harm to be the basis for a felony conviction is that the defendant's conduct was of the most threatening sort and it is largely by chance that a murder was not committed.")

RSA 631:2(I) (d) Second Degree Assault

The defendant is charged with second degree assault. The definition of the crime of second degree assault has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused bodily injury to another person; and
2. The injured person was under thirteen years of age; and
3. The defendant acted [purposely] [knowingly.]

These are the elements of the crime of second degree assault. Certain words in the definition need to be further defined:

"Purposely" means [see definition of purposely].

"Knowingly" means [see definition of knowingly].

RSA 631:2(I) (e) Second Degree Assault

The defendant is charged with second degree assault. The definition of the crime of second degree assault has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant caused injury to another person; and
2. The injury resulted in [miscarriage] [stillbirth]; and
3. The defendant acted [recklessly] [negligently].

These are the elements of the crime of second degree assault. Certain words in the definition need to be defined:

"Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus¹.

"Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion.²

"Recklessly" means [see definition for recklessly].

"Negligently" means [see instruction for negligently].

¹ RSA 631:2, II (a)

² RSA 631:2, II (b)

RSA. 631:3 Reckless Conduct¹

The defendant is charged with reckless conduct. The definition of this crime has [two] [three] [four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

DRAFT

1. The defendant engaged in conduct that either placed or may have placed another person in danger of serious bodily injury and ;
2. The defendant acted recklessly; and
- [3 The defendant used a deadly weapon; and]
- [4. The deadly weapon was a firearm.]

These are the elements of the crime of reckless conduct. Certain words need to be further defined.

“Deadly weapon” means [see RSA 625:11 V].

"Serious bodily injury" means [see RSA 625:11 VI].

“Firearm” means a weapon capable of discharging a shot by means of gunpowder.²

"Recklessly" means [refer to “recklessly” jury instruction].

¹ This statute is derived from Model Penal Code § 211.2. See Report of Commission to Recommend Codification of Criminal Laws § 576:3 comment at 43 (1969).

² *State v. Beaudette*, 124 N.H. 579,581 (1984); *State v. Taylor*, 136 N.H. 131, 133 (1992)

RSA 631:4, I (a) Criminal Threatening (Placing or attempting to place another in fear.)

The defendant is charged with criminal threatening. The definition of this crime has [two], [three] [four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. By physical conduct, the defendant placed or attempted to place another person in fear of [imminent bodily injury] [physical contact]; and
- 2 The defendant acted purposely; and
- [3. The defendant used a deadly weapon]; and
- [4. The deadly weapon was a firearm.]

These are the elements of the crime of criminal threatening. Certain words need to be further defined.

Bodily injury means [to be supplied later by the committee]

Deadly weapon means [see RSA 625:11, V.]

“Firearm” means a weapon capable of discharging a shot by means of gunpowder.¹

“Purposely means” [refer to “purposely” jury instruction].

¹ *State v. Beaudette*, 124 N.H. 579,581 (1984); *State v. Taylor*, 136 N.H. 131, 133 (1992)

RSA 631:4, I (b) Criminal Threatening (Placing an object or graffiti on the property of another)¹

The defendant is charged with criminal threatening. The definition of this crime has [two], [three] [four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant placed an object or graffiti on the property of another; and
2. The defendant acted with a purpose to coerce or terrorize another; and
- [3. The defendant used a deadly weapon]; and
- [4. The deadly weapon was a firearm].

These are the elements of the crime of criminal threatening. Certain words need to be further defined.

“Property” means [see RSA 637:2, I.]

“Property of another” means [see RSA 637:2, IV]

To “terrorize” means to cause alarm, fright, or dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation.²

“Firearm” means a weapon capable of discharging a shot by means of gunpowder³

“Purposely means” [refer to “purposely” jury instruction].

¹ This statute is derived from Model Penal Code § 211.2. See Report of Commission to Recommend Codification of Criminal Laws § 576:3 comment at 43 (1969).

² RSA 631:4, III (b).

³ *State v. Beaudette*, 124 N.H. 579,581 (1984); *State v. Taylor*, 136 N.H. 131, 133 (1992)

RSA 631:4, I (c) Criminal Threatening (Crime against property)

DRAFT

The defendant is charged with criminal threatening. The definition of this crime has [two], [three] [four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant placed on object or graffiti on the property of another; and
2. The defendant acted with a purpose to coerce or terrorize another; and
- [3. The defendant used a deadly weapon]; and
- [4. The deadly weapon was a firearm].

These are the elements of the crime of criminal threatening. Certain words need to be further defined.

“Property” means [see RSA 637:2, I.]

“Property of another” means [see RSA 637:2, IV]

To “terrorize” means to cause alarm, fright, or dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation¹.

“Firearm” means a weapon capable of discharging a shot by means of gunpowder²

“Purposely means” [refer to “purposely” jury instruction].

¹ RSA 631:4, III (b).

² *State v. Beaudette*, 124 N.H. 579,581 (1984); *State v. Taylor*, 136 N.H. 131, 133 (1992)

RSA 631:4, I (d) Criminal Threatening (Crime against another)¹

The defendant is charged with criminal threatening. The definition of this crime has [two] [three] [four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant threatened to commit a crime against the person of another; and
2. The defendant acted with a purpose to coerce or terrorize another; and
- [3. The defendant used a deadly weapon; and]
- [4. The deadly weapon was a firearm].

These are the elements of the crime of criminal threatening. Certain words need to be further defined.

To “terrorize” means to cause alarm, fright, or dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation².

Deadly weapon means [insert statutory definition, RSA 625:11, V.

“Firearm” means a weapon capable of discharging a shot by means of gunpowder³

“Purposely means” [refer to “purposely” jury instruction].

¹ This statute is derived from Model Penal Code § 211.2. See Report of Commission to Recommend Codification of Criminal Laws § 576:3 comment at 43 (1969).

² RSA 631:4, III (b)

³ *State v. Beaudette*, 124 N.H. 579,581 (1984); *State v. Taylor*, 136 N.H. 131, 133 (1992)

RSA 631:4, I (e) Criminal Threatening (Crime of violence)¹

The defendant is charged with criminal threatening. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

DRAFT

1. The defendant threatened [any crime of violence] [the delivery or use of a biological or chemical substance]; and
2. The defendant acted with [a purpose to cause][reckless disregard of causing fear, terror or inconvenience associated with] the evacuation of a building, place of assembly, facility or public transportation, or otherwise cause serious public inconvenience.

These are the elements of the crime of criminal threatening. Certain words need to be further defined.

“Purposely” means” [refer to “purposely” jury instruction].

“Recklessly” means [refer to “recklessly” jury instruction].

¹ This statute is derived from Model Penal Code § 211.2. See Report of Commission to Recommend Codification of Criminal Laws § 576:3 comment at 43 (1969).

RSA 631:4, I (f) Criminal Threatening (Crime of violence)

The defendant is charged with criminal threatening. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

DRAFT

1. The defendant delivered, threatened to deliver, caused the delivery of any substance to another person; and
2. The defendant knew the substance could be perceived as a biological or chemical substance and;
3. The defendant acted with [the purpose of] [in reckless disregard of] causing fear or terror.

These are the elements of the crime of criminal threatening. Certain words need to be further defined.

“Purposely” means” [refer to “purposely” jury instruction].

“Recklessly” means [refer to “recklessly” jury instruction].

SEXUAL ASSAULT AND RELATED OFFENSES

RSA 632-A:2, I(a): AFSA Overcoming by physical force

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The defendant overcame the other person through the actual application of physical force, physical violence, or superior physical strength; and
3. The defendant acted knowingly¹.

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined.

“Sexual penetration” means (see the instruction for the means of penetration alleged.)

“Knowingly” means [see definition of knowingly.]

¹ *State v Ayer*, 136 N.H. 191 (1992)

RSA 632-A:2, I(b): AFSA Victim physically helpless to resist

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus,, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The other person was physically helpless to resist; and
3. The defendant acted knowingly¹.

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined.

“Sexual penetration” means [see the instruction for the means of penetration alleged.]

“Knowingly” means [see definition of knowingly.]

¹ *State v. Ayer*, 136 N.H. 191 (1992)

RSA 632-A:2, I(c):AFSA Coercion by threats of force

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The defendant coerced the other person to submit by threatening to use physical violence or superior physical strength on the other person; and¹
3. The other person believed that the defendant had the present ability to execute these threats; and
4. The defendant acted knowingly.²

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined.

“Sexual penetration” means [see the instruction for the means of penetration alleged.]

“Knowingly” means [see definition of knowingly].

¹ See *State v. Kulikowski*, 132 N.H. 281 (1989); *State v. Johnson*, 130 N.H. 578 (1988).

² *State v. Ayer*, 136 N.H. 191 (1992)

RSA 632-A:2, I(d):AFSA Coercion by threats of retaliation

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The defendant coerced that person to submit to sexual penetration by threatening to retaliate against [that person] [a third person]; and ¹
3. The person threatened believed that the defendant had the ability to execute the threats in the future; and
4. The defendant acted knowingly.²

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined.

“Sexual penetration” means [see the instruction for the means of penetration alleged].

“Knowingly” means [see definition of knowingly].

¹ *State v. Johnson*, 130 N.H. 578, 581 (1988)

² *State v. Ayer*, 136 N.H. 191 (1992)

RSA 632-A:2, I(e): AFSA Victim submits under circumstances involving false imprisonment, kidnapping or extortion

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The other person submitted under circumstances involving [false imprisonment], [kidnapping] [extortion]; and
3. The defendant acted knowingly.¹

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined.

“Sexual penetration” means [see the instruction for the means of penetration alleged].

“False imprisonment” means [insert the appropriate criminal code definition, RSA 633:3].

“Kidnapping” means [insert the appropriate criminal code definition, RSA 633:1].

“Extortion” means [insert the appropriate criminal code definition, RSA 637:5].

“Knowingly” means [see definition of knowingly.]

The State must also prove all of the elements of the crime of [kidnapping] [extortion].²

¹ *State v Ayer*, 136 N.H. 191 (1992)

² *State v Bussiere*, 118 .H. 659 (1978)

RSA 632-A:2, I(f):AFSA Administering an Intoxicating Substance

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this crime has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The defendant [administered an intoxicating substance to the alleged victim] [had knowledge that another person had administered an intoxicating substance to the alleged victim]; and
3. [The defendant][the other person] administered the intoxicating substance without the prior knowledge or consent of the alleged victim; and
4. The alleged victim was mentally incapacitated as a result of [the defendant's actions][the actions of the another person];and
5. The defendant acted knowingly¹.

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined. "Sexual penetration" means [see the instruction for the means of penetration alleged].

"Knowingly" means [see definition of knowingly].

¹ *State v. Ayer*, 136 N.H. 191 (1992)

RSA 632-A:2, I(g) AFSA Therapeutic or Treating Relationship

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this crime has four parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The defendant did so [at the time and in the course of providing therapy, or medical treatment or examination to the alleged victim] [within one year of terminating therapy or medical treatment of the alleged victim]; and
3. The defendant [thereby acted in a manner or for purposes that are not professionally recognized as ethical or acceptable] [used his/her position as a provider of therapy or medical treatment to coerce the victim to submit]; and
4. The defendant acted knowingly.

These are the elements of the crime of aggravated felonious sexual assault. Certain words need to be further defined.

“Sexual penetration” means (see definition in RSA 632-A:1, V).

“Therapy” means (see definition in RSA 632-A:1, VI).¹

“Knowingly” means (refer to jury instruction on “knowingly”).

¹ In State v. Flodin, 159 N.H. 358, 363-365 (2009) the Court held that the defendant, who provided “spiritual counseling” to inmates, did not provide “therapy” as that term is defined in this statute

RSA 632-A:2, I(h): AFSA Mental Defect

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this offense has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The other person was not the defendant's legal spouse; and
3. The other person was mentally defective; and
4. The defendant knew or had reason to know that the other person was mentally defective; and
5. The defendant acted knowingly.¹

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined.

“Sexual penetration” means [see the instruction for the means of penetration alleged.]

You may find the person mentally defective only if he/she suffered from a mental disease or defect and was incapable of freely arriving at an independent choice whether or not to engage in sexual conduct.

In determining whether someone was capable of making an independent choice, you should focus on the person's capacity to appraise in a meaningful way the physical nature and consequences of his/her sexual conduct and the person's capacity to make a decision that is legitimately his/her own.

A person is not mentally defective merely because he/she does not in fact take any action to learn about the consequences of his/her conduct or fails to consider alternatives before choosing a particular course of action.²

“Knowingly” means [see definition of knowingly].

¹ *State v. Ayer*, 136 N.H. 191 (1992).

² *State v. Frost*, 141 N.H. 493 (1996).

RSA 632-A:2, I(i):AFSA Through Concealment or the Element of Surprise

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The defendant used concealment or the element of surprise to accomplish penetration, before the other person had an adequate chance to flee or resist; and
3. The defendant acted knowingly.¹

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined.

“Sexual penetration” means [see the instruction for the means of penetration alleged.]

“Knowingly” means [see definition of knowingly].

¹ *State v Ayer*, 135 N.H. 191 (1992).

RSA 632-A:2, 1(j): AFSA – Same Household/Blood or Affinity

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The [other person] was 13 years of age or older but under the age of 16 and was not legally married to the defendant at the time; and
3. [The [other person] and the defendant were members of the same household] [the [other person] and the defendant were related by [blood] [affinity]; and
4. The defendant acted knowingly.

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be defined:

“Knowingly” means [see definition of knowingly.]

RSA 632-A:2, I(k): AFSA Use of Authority to Coerce

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this offense has six parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The defendant was in a position of authority over the other person; and
3. The defendant used this position of authority to coerce the person to submit to sexual penetration;¹ and
4. The person was 13 years of age or older and under 18 years of age; and
5. The person was not legally married to the defendant; and
6. The defendant acted knowingly.

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined.

“Sexual penetration” means [see the instruction for the means of penetration alleged].

“Knowingly” means [see definition of knowingly].

¹ *State v. Johnson*, 130 N.H. 578, 581 (1988), [citing BLACK’S LAW DICTIONARY]; see also *State v. Collins*, 129 N.H. 488, 490 (1987).

RSA 632-A:2, I(1): AFSA Victim Under 13 Years of Age

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The other person was under 13 years of age; and
3. The defendant acted knowingly.¹
4. These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined.

“Sexual penetration” means [read the instruction for the means of penetration alleged].

“Knowingly” means [see definition of knowingly].

¹ *Goodnow v Perrin*, 119 N.H. 483 (1979) (defendant’s knowledge of victim’s age not an element).

RSA 632-A:2, I(m): AFSA Non-Consent Indicated by Speech or Conduct

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in sexual penetration with another person; and
2. The other person indicated by speech or conduct that she/he did not freely consent to the performance of the sexual act¹; and
3. The defendant acted knowingly².

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined.

“Sexual penetration” means [see the instruction for the means of penetration alleged].

Lack of consent is part of the definition of this crime. Lack of consent may be proved in a variety of ways, including but not limited to an attempt to escape, outcry, or offer of resistance. Lack of consent may also be proved by showing that the alleged victim was restrained by fear of violence. You are not required to infer consent from the alleged victim’s failure to physically resist a sexual assault.³

“Knowingly” means [see definition of knowingly].

¹ See separate instruction on consent, 632-A:6, III.

² *State v. Ayer*, 136 N.H. 191 (1992)

³ RSA 632-A:6, III; *State v. Hunter*, 132 N.H. 556, 560 (1989); *State v. Lemire*, 115 N.H. 526, 532 (1975).

RSA 632-A:2, I(n) AFSA Position of authority incarceration or probation

The defendant is charged with the crime of aggravated felonious sexual assault. The definition of this crime has four parts, or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

DRAFT

1. The defendant engaged in sexual penetration with another person; and

[2. The defendant was in a position of authority over the other person, in that [he] [she] had direct supervisory or disciplinary authority over the alleged victim because the alleged victim was incarcerated in a [correctional institution] [the secure psychiatric unit] [a juvenile detention facility] where the defendant was employed; and]

[2. The defendant was a [probation or parole officer] [juvenile probation and parole officer] who had direct supervisory authority over the alleged victim while the alleged victim was on [parole or probation] [juvenile probation]; and]

3. The defendant used [his] [her] authority to coerce the alleged victim to submit; and¹

4. The defendant acted knowingly.

The consent of the victim to the act of sexual penetration under the circumstances outlined above is not a defense.

These are the elements of the crime of aggravated felonious sexual assault. Certain words need to be further defined.

“Sexual penetration” means (see definition in RSA 632-A:2, V).

“Knowingly” means (refer to jury instruction on “knowingly”).

¹ *State v Fortier* 146 N.H. 784 (2001) (Subtle persuasion associated with position of authority constitutes sufficient evidence to prove coercion.

State v. Foss 148 N.H. 209 (2002) (Conviction of correctional officer reversed where there was insufficient evidence of coercion)

RSA 632-A:2, II: AFSA Without Penetration; Person Under Age 13

The defendant is charged with aggravated felonious sexual assault. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant touched the genitalia of another person¹; and
2. The other person was under 13 years of age at the time; and
3. The touching was under circumstances that can be reasonably construed as being for the purposes of sexual arousal or gratification; and
4. The defendant acted purposely.²

These are the elements of the crime of aggravated felonious sexual assault. Certain words in the definition need to be further defined.

“Purposely” means [see definition of purposely].

¹ *State v Dickson*, 116 N.H. 175 (1976); *State v Barnett*, 147 N.H. 334 (2001)

² *State v Goodwin*, 140 N.H. 672 (1996); *State v Pond*, 132 N.H. 47 (1989)

RSA 632-A:6, I. Corroboration

The law does not require that the testimony of the alleged victim be corroborated. This means that if you find that the alleged victim's testimony is credible—in other words, if you believe her/his testimony—then you may return a verdict of guilty without additional evidence.

This does not mean that simply because the alleged victim took an oath to tell the truth you must accept her/his testimony as true. In deciding whether the State has proved one or more of the charges against the defendant beyond a reasonable doubt, you must decide the credibility of the alleged victim just as you must decide the credibility of every other witness. You must apply the same factors to decide her/his credibility as you apply to all the other witnesses.

RSA 632-A:6, III: Consent

Evidence has been presented that the other person consented to the acts of the defendant that constitute the crime of [aggravated felonious sexual assault, felonious sexual assault]. Consent is a complete defense to the crime charged.

The defendant is not required to prove consent. Instead, the State must prove that there was no consent. Thus, you must decide whether the State has proved beyond a reasonable doubt that there was no consent. If you decide that the State has not proved that there was no consent, then you must find the defendant not guilty. If, however, you decide that the State has proved lack of consent and the other elements of the definition of the crime charged, then you should find the defendant guilty.

Lack of consent may be proved in a variety of ways, including but not limited to an attempt to escape, outcry, or offer of resistance. Lack of consent may also be proved by showing that the alleged victim was restrained by fear of violence. You are not required to infer consent from the alleged victim's failure to physically resist a sexual assault¹.

¹ RSA 632-A:6, III; *State v. Hunter*, 132 N.H. 556, 560 (1989); *State v. Lemire*, 115 N.H. 526, 532 (1975).

RSA 632-A: 10 I Prohibition from Child Care Service of Persons Convicted of Certain Offenses

DRAFT

The defendant is charged with the crime of prohibition from child care service of persons convicted of certain offenses. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant was convicted of the crime of [child pornography] [second degree assault on a minor] [sexual assault] [on [date] in the [name of court]]; and
2. Subsequent to the date of said conviction, the defendant undertook [employment] [volunteer service] as a [teacher] [coach] [boy or girl scout leader]; and
3. The defendant acted knowingly.

RSA 632-A:10 II or III Prohibition from Child Care Service of Persons Convicted of Certain Offenses

DRAFT

The defendant is charged with the crime of prohibition from child care service of persons convicted of certain offenses. The definition of this crime has four parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant was convicted of the crime of [child pornography] [second degree assault on a minor] [sexual assault], on [date] in the [name of court]; and
2. Subsequent to the date of said conviction, the defendant [applied for employment] [made initial application for teacher certification] [volunteered for service] as a [teacher] [coach] [boy or girl scout leader]; and
3. In connection with [applying for such employment or certification] [volunteering for such service] the defendant failed to provide information of said prior conviction to the agency to which the defendant was applying or volunteering; and
4. The defendant acted knowingly.

INTERFERENCE WITH FREEDOM

RSA 633:1, I Kidnapping (General Instruction)

The defendant is charged with the offense of kidnapping. The definition of this crime has [three][four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant confined another under his control; and
2. The defendant did so knowingly; and
3. The defendant acted with the purpose to [hold the person confined for ransom or as a hostage][avoid apprehension by a law enforcement official][terrorize the person confined or some other person][commit an offense against the person confined][.]; and]
- [4. The defendant either failed voluntarily to release the person confined without serious bodily injury, or did voluntarily release the person confined, but in an unsafe place¹.]

These are the elements of the crime of kidnapping. Certain words in the definition need to be further defined:

["Serious bodily injury" means any harm to the body that causes severe, permanent, or protracted loss of or impairment to the health or of the function of any part of the body.²]

"Knowingly" means [see definition of knowingly].

"Purposely" means [see definition of purposely].

¹ State v. LaRose, 127 N.H. 146, 154 (1985) (describing appropriate jury instruction).

² R.S.A. 625:11, VI; see also State v. Goodwin, 118 N.H. 862 (1978) ("serious bodily injury," within the terms of this section, includes within its definition, the serious psychological injuries of a rape victim; not every aggravated felonious sexual assault, however, will constitute serious bodily injury to make an accompanying kidnapping a class A felony as a matter of law).

RSA 633:1, I-a – Kidnapping (Child Under 18 Years of Age)

The defendant is charged with the offense of kidnapping. The definition of this crime has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [took, enticed away, detained, or concealed another person][caused another person to be taken, enticed away, detained, or concealed]; and
2. The other person was a child under 18 years of age; and
3. The defendant and the child were not related by consanguinity (i.e., they did not have a common ancestor); and
4. The defendant acted knowingly; and
5. The defendant acted with the additional intent to detain or conceal the child from a parent, guardian, or other person having lawful physical custody of the child.

These are the elements of the crime of kidnapping. Certain words in the definition need to be further defined:

“Knowingly” means [see definition of knowingly].

An “intent to detain or conceal” requires purposeful conduct. “Purposely,” in turn, means [see definition of purposely].¹

¹ R.S.A. 633:1, I-a contains two different mental states – “knowingly” and “intent to detain or conceal.” The State must prove both these mental states beyond a reasonable doubt. The statute does not, however, specify which of the four mental states enumerated in R.S.A. 626:2, II corresponds to “intent to detain or conceal.” The language does, however, suggest a specific intent. Accordingly, “purposely” constitutes the appropriate mens rea. State v. Goodwin, 140 N.H. 672, 674 (1996) (“The Criminal Code generally uses the terms “purposely” and “knowingly” in place of specific intent and general intent, respectively.”).

RSA 633:2 Criminal Restraint

DRAFT

The defendant is charged with the offense of criminal restraint. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant confined another unlawfully; and
2. The circumstances exposed the other person to risk of serious bodily injury; and
3. The defendant acted knowingly.

To “confine another unlawfully” in turn requires three things. First, there must be a confinement or detention that restricts another person’s free movement. Second, the confinement must be unlawful, a requirement which is satisfied when the perpetrator acts without legal authority and the victim does not consent. Third, the perpetrator must have knowledge of both the confinement and its unlawfulness.¹ “Confining another unlawfully” includes, but is not limited to, confinement accomplished by force, threat or deception or, in the case of a person who is under the age of 16 or incompetent, if it is accomplished without the consent of his or her parent or guardian².

These are the elements of the crime of criminal restraint. Certain words in the definition need to be further defined.

“Serious bodily injury” means any harm to the body that causes severe, permanent, or protracted loss of or impairment to the health or of the function of any part of the body.”³

“Knowingly” means [see definition of knowingly].

¹ State v. Fecteau, 121 N.H. 1003 (1981) (describing the three elements of “confines another unlawfully”).

² R.S.A. 633:2, II

³ R.S.A. 625:11, VI; see also State v. Goodwin, 118 N.H. 862 (1978) (“serious bodily injury,” within the terms of this section, includes within its definition, the serious psychological injuries of a rape victim; not every aggravated felonious sexual assault, however, will constitute serious bodily injury to make an accompanying kidnapping a class A felony as a matter of law); State v. Dustin, 122 N.H. 544, 547 (1982) (citing Goodwin as grounds for admission of evidence of psychological injury in criminal restraint prosecution).

RSA 633:3 False Imprisonment

The defendant is charged with the crime of false imprisonment. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant confined another person; and
2. The confinement was unlawful; and
3. The defendant acted knowingly.

These are the elements of the crime of false imprisonment. Certain words in the definition need to be further defined.

“Confinement” means a confinement or detention which restricts another person’s free movement.¹

“Unlawful confinement” means confinement accomplished without legal authority and without the consent of the other person. It includes confinement accomplished by force, threat or deception. In the case of a person under the age of 16 or incompetent, confinement of such a person is unlawful if it is accomplished without the consent of the parent or guardian.²

“Knowingly” means [see definition of knowingly].

¹ *State v Fecteau*, 121 N.H. 1003, 1007 (1981).

² RSA 633:2, II.: *id.* at 1007.

RSA 633:3-a, I(a) – Stalking Course of Conduct; Reasonable Person

DRAFT

The defendant is charged with the crime of stalking. The definition of the crime of stalking has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in a course of conduct; and
2. The course of conduct was targeted at a specific individual; and
3. The course of conduct was such that it would cause a reasonable person to fear for [his][her] personal safety or the safety of [his][her] immediate family; and
4. The targeted person was actually placed in fear for his personal safety or the safety of his immediate family; and
5. The defendant acted [purposely][knowingly][recklessly].

These are the elements of stalking. Certain words in the definition need to be further defined.

“Course of conduct” means two or more acts committed over a period of time, however short, which evidences a continuity of purpose; and which may include, but is not limited to, any of the following:

Threatening the safety of the targeted person or an immediate family member;

Following, approaching, or confronting the targeted person or an immediate family member;

Appearing in close proximity to or entering the residence, place of employment, school, or other location where the targeted person or members of his immediate family can be found;

Causing damage to the residence or property of the targeted person or a member of his immediate family;

Placing or causing to be placed an object on the property of the targeted person or a member of his immediate family;

Causing injury to a pet belonging to the targeted person or a member of his immediate family;

Acts of communication with the targeted person or members of that person’s immediate family, either directly or through third persons and whether in person, by telephone, telegraph, mail, electronic communication or otherwise.

“Immediate family” means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person.

If a person engages in acts which would constitute stalking after having been previously advised by a law enforcement officer that acts of a similar character are unlawful, or after having been served with a protective order prohibiting the person from engaging in such acts, the jury may, but is not required to, presume that the person acted knowingly.¹

[“Purposely” means [see definition of purposely]].

[“Knowingly” means [see definition of knowingly]].

[“Recklessly” means [see definition of recklessly]].

¹ In 2000, the legislature amended RSA 633:3-a I-III and re-enacted the statute. (See Laws of 2000, 151:1,2 eff. Jan. 1,2001). The text of the act does not contain a new subsection III. The Lexis version of the statute also contains no new subsection III. The Thompson/West version of the statute, however, does contain the text of the old section III. This version appears to be in error in light of the legislative history.

RSA 633:3-a, I(b) – Stalking Intent to Cause Fear

DRAFT

The defendant is charged with the crime of stalking. The definition of the crime of stalking has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in a course of conduct; and
2. The course of conduct was targeted at a specific individual; and
3. The course of conduct was of such a nature that the defendant knew it would cause the targeted person to fear for [his][her] personal safety of the safety of [his][her] immediate family; and
4. The defendant acted [purposely][knowingly].

These are the elements of stalking. Certain words in the definition need to be further defined.

“Course of conduct” means two or more acts committed over a period of time, however short, which evidences a continuity of purpose; and which may include, but is not limited to, any of the following:

Threatening the safety of the targeted person or an immediate family member;

Following, approaching, or confronting the targeted person or an immediate family member;

Appearing in close proximity to or entering the residence, place of employment, school, or other location where the targeted person or members of his immediate family can be found;

Causing damage to the residence or property of the targeted person or a member of his immediate family;

Placing or causing to be placed an object on the property of the targeted person or a member of his immediate family;

Causing injury to a pet belonging to the targeted person or a member of his immediate family;

Acts of communication with the targeted person or members of that person’s immediate family, either directly or through third persons and whether in person, by telephone, telegraph, mail, electronic communication or otherwise.

“Immediate family” means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person.

If a person engages in acts which would constitute stalking after having been previously advised by a law enforcement officer that acts of a similar character are unlawful, or after having been served with a protective order prohibiting the person from engaging in such acts, the jury may, but is not required to, presume that the person acted knowingly.¹

["Purposely" means [see definition of purposely]].

["Knowingly" means [see definition of knowingly]].

¹ In 2000, the legislature amended RSA 633:3-a I-III and re-enacted the statute. (See Laws of 2000, 151:1,2 eff. Jan. 1,2001). The text of the act does not contain a new subsection III. The Lexis version of the statute also contains no new subsection III. The Thompson/West version of the statute, however, does contain the text of the old section III. This version appears to be in error in light of the legislative history.

RSA 633:3-a, I(c) – Stalking Single Act; Protective Order

The defendant is charged with the crime of stalking. The definition of the crime of stalking has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant had been served with or otherwise provided notice of a protective order issued by a court, which prohibited the defendant from having contact with [the victim];¹ and
2. After being served with notice or otherwise provided notice of the protective order, the defendant violated the order by [threatening the safety of the protected person or a member of the immediate family of the protected person] [following, approaching, or confronting the protected person or a member of the immediate family of the protected person] [appearing in close proximity to or entering the residence, place of employment, school, or other location where the protected person or members of his immediate family can be found][causing damage to the residence or property of the protected person or a member of his immediate family] [placing or causing to be placed an object on the property of the protected person or a member of his immediate family] [causing injury to a pet belonging to the protected person or a member of his immediate family] [communicating with the protected person or members of that person's immediate family, either directly or through third persons and whether in person, by telephone, telegraph, mail, electronic communication or otherwise]; and
3. The defendant acted [purposely][knowingly][recklessly].

These are the elements of stalking. Certain words in the definition need to be further defined.

“Immediate family” means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person.

If a person engages in acts which would constitute stalking after having been previously advised by a law enforcement officer that acts of a similar character are unlawful, or after having been served with a protective order prohibiting the person from engaging in such acts, the jury may, but is not required to, presume that the person acted knowingly.²

[“Purposely” means [see definition of purposely]].

[“Knowingly” means [see definition of knowingly]].

[“Recklessly” means [see definition of recklessly]].

¹ RSA 633:3-a provides “after being served with, or otherwise provided notice of, a protective order pursuant to RSA 173-B, RSA 458:16, or paragraph III-a of this section, or an order pursuant to RSA 597:2.”

² In 2000, the legislature amended RSA 633:3-a I-III and re-enacted the statute. (See Laws of 2000, 151:1,2 eff. Jan. 1,2001). The text of the act does not contain a new subsection III. The Lexis version of the statute also contains no new subsection III. The Thompson/West version of the statute, however, does contain the text of the old section III. This version appears to be in error in light of the legislative history.

RSA 633:4, I Interference With Custody (Felony)

The defendant is charged with the crime of interference with custody. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt.¹ Thus, the State must prove that:

1. The defendant [took from this state][enticed away from this state] a child under the age of eighteen; and
2. The defendant acted with the purpose to detain or conceal the child from a parent, guardian or other person having lawful charge of the child; and
3. The defendant did not have a right of custody with respect to child; and
4. The defendant acted knowingly.

These are the elements of the crime of interference with custody. Certain words in the definition need to be further defined.

“Knowingly” means [see definition of knowingly.]

¹ If applicable, instruct on the affirmative defense provisions set forth in RSA 633:4, III and IV.

RSA 633:4, II Interference With Custody (Misdemeanor)

The defendant is charged with the crime of interference with custody. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt.¹ Thus, the State must prove that:

1. The defendant [took or enticed away][detained or concealed a child] under the age of eighteen [caused a child under the age of eighteen to be taken or enticed away]; and
2. The defendant acted with the purpose to detain or conceal the child from a parent, guardian or other person having lawful charge of the child; and
3. The defendant did not have a right of custody with respect to child; and
4. The defendant acted knowingly.

These are the elements of the crime of interference with custody. Certain words in the definition need to be further defined.

“Knowingly” means [see definition of knowingly.]

¹ If applicable, instruct on the affirmative defense provisions set forth in RSA 633:4, III and IV.

DESTRUCTION OF PROPERTY

DRAFT

RSA 634:1, I Arson (Misdemeanor)

The defendant is charged with the crime of arson. The definition of the crime of arson has 3 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant [started a fire] [caused an explosion] and ;
2. The [fire] [explosion] unlawfully¹ damaged the property of another and;
3. The defendant acted knowingly.

These are the elements of the crime of arson. Certain words in the definition need to be further defined.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.²

“Knowingly” see definition of knowingly.

¹ See State v. Janvrin 122 N.H. 75 (explains unlawfully)

² See State v. Martin 122 N.H. 20 (1982) (a mortgagee’s interest is sufficient to constitute property of another)

RSA 634:1, II (a) Arson in Occupied Structure

DRAFT

The defendant is charged with the crime of arson. The definition of the crime of arson has 4 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant [started a fire][caused an explosion]and ;
2. The [fire] [explosion] caused unlawful¹ damage to property of another which was an occupied structure;
3. The defendant knew that the property was an occupied structure
4. The defendant acted knowingly

These are the elements of the crime of arson. Certain words in the definition need to be further defined.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.²

“Occupied structure” shall mean any structure, vehicle, boat or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

“Knowingly” see definition of knowingly.

¹ See *State v. Janvrin* 122 N.H. 75 (explains unlawfully)

² See *State v. Martin* 122 N.H. 20 (1982) (a mortgagees interest is sufficient to constitute property of another)

RSA 634:1, III Arson on historic structure

DRAFT

The defendant is charged with the crime of arson. The definition of the crime of arson has 4 parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant [started a fire] [caused an explosion]
2. The [fire][explosion] caused unlawful¹ damage to property of another; and
3. The property was an historic structure and;
4. The defendant acted knowingly.

These are the elements of the crime of arson. Certain words in the definition need to be further defined.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.²

“Historic structure” means any structure listed, or determined by the department of cultural resources to be eligible for listing, in the National Register of Historic Places, or designated as historic under state law.

“Knowingly” see definition of knowingly.

¹ See *State v. Janvrin* 122 N.H. 75 (explains unlawfully)

² See *State v. Martin* 122 N.H. 20 (1982) (a mortgagees interest is sufficient to constitute property of another)

RSA 634:III (a) Arson for Insurance

DRAFT

The defendant is charged with the crime of arson. The definition of the crime of arson has 5 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove:

1. The defendant [started a fire] [caused an explosion]; and
2. The [fire] [explosion] caused unlawful¹ damage to property; and
3. The property belonged to the defendant or another person; and
4. The [fire] [explosion] was caused for the purpose of collecting insurance on the damaged property
5. The defendant acted knowingly.

These are the elements of the crime of arson. Certain words in the definition need to be further defined.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.²

“Knowingly” see definition of knowingly.

¹ See *State v. Janvrin* 122 N.H. 75 (explains unlawfully)

² See *State v. Martin* 122 N.H. 20 (1982) (a mortgagees interest is sufficient to constitute property of another)

RSA 634:1, III (b) Arson – Danger of death or serious bodily injury

DRAFT

The defendant is charged with the crime of arson. The definition of the crime of arson has 3 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove:

- 1) The defendant [started a fire][caused an explosion]; and
- 2) The defendant acted purposely in [starting a fire][causing an explosion]; and
- 3) The defendant recklessly [placed another in danger of death or serious bodily injury][placed an occupied structure in danger of damage].

These are the elements of the crime of arson. Certain words in the definition need to be defined

“Occupied structure” shall mean any structure, vehicle, boat or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

“Serious bodily injury” means any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or of the function of any part of the body.

“Purposely” see definition of purposely

RSA 634:1, III (d) Arson - Damage over \$1,000

DRAFT

The defendant is charged with the crime of arson. The definition of the crime of arson has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

- 1) The defendant [started a fire] [caused an explosion] and ;
- 2) The [fire][explosion] caused unlawful¹ damage; and
- 3) The unlawful damage was to property of another; and
- 4) The unlawful damage caused a pecuniary loss² in excess of one thousand dollars; and
- 5) The defendant acted knowingly.

These are the elements of the crime of arson. Certain words in the definition need to be further defined.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.³

“Knowingly” see definition of knowingly

¹ See *State v. Janvrin* 122 N.H. 75 (explains unlawfully)

² See *State v. Paris* 137 N.H. 322 (1993) (discussing pecuniary loss in the context of criminal mischief)

³ See *State v. Martin* 122 N.H. 20 (1982) (a mortgagees interest is sufficient to constitute property of another)

RSA 634:2 Criminal Mischief Class B Felony

The defendant is charged with the crime of criminal mischief. This offense has [four][five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant damaged the property of another; and
2. The defendant had no right to do so nor any reasonable basis to believe he/she had such a right; and
3. The defendant caused or attempted to cause: [pecuniary loss in excess of \$1,000][a substantial interruption or impairment of public communication, transportation, supply of water, gas or power or other public service][the discharge of a firearm at an occupied structure][damage to property when he/she knows the property has historical, cultural, sentimental value that cannot be restored by repair or replacement];and
- [4.] The aggregate pecuniary loss involved acts committed in one scheme or course of conduct; and
- [4][5]. The defendant acted purposely¹.

These are the elements of the crime of criminal mischief. Certain words need to be further defined:

“Occupied structure” means any structure, vehicle, boat or place adapted for overnight accommodations of persons or for carrying on business therein, whether or not a person is actually present.

“Property” means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor, services or otherwise containing any thing of value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedures, formula or invention which the owner thereof intends to be available only to persons selected by him.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as con-

¹ See *State v Paris* 137 NH 322 1993 The defendant need not act purposely with respect to the amount of pecuniary loss caused.

traband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

“Purposely” means [see definition of purposely.]

DRAFT

RSA 634:2 Criminal Mischief Misdemeanor

DRAFT

The defendant is charged with the crime of criminal mischief. This offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant damaged the property of another; and
2. The defendant had no right to do so nor any reasonable basis to believe he/she had such a right; and
3. The defendant acted [purposely][recklessly].

These are the elements of the crime of criminal mischief. Certain words need to be further defined:

“Property” means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor, services or otherwise containing any thing of value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedures, formula or invention which the owner thereof intends to be available only to persons selected by him.

“Property of another” includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

“Purposely” means [see definition of purposely.]

“Recklessly” means [see definition of recklessly.]

UNAUTHORIZED ENTIRE

RSA 635:1 Burglary (Class A Felony; Nighttime Entry Of A Dwelling)

The defendant is charged with the crime of burglary. The definition of this offense has five parts or elements. The State must prove each element beyond a reasonable doubt.¹ Thus, the State must prove that:

1. The defendant entered the dwelling of another; and
2. The entry was at night; and
3. The dwelling was not open to the public at the time; and
4. The defendant was neither licensed nor privileged to enter; and
5. The defendant acted with the purpose to commit a crime therein.

These are the elements of the crime of burglary. Certain words in the definition need to be further defined.

“License or privilege” means to have permission to enter. A person has permission to enter if he/she would naturally be expected to be in the dwelling in the normal course of his/her duties or habits. The permission to enter need not be explicit. The permission may be limited to a time when the defendant would reasonably be expected to be in the dwelling. The permission may also be limited to part of the dwelling²

“Night” means the period between 30 minutes past sunset and 30 minutes before sunrise.

“Occupied structure” means [see definition of RSA 635:1 III.]

“Purposely” means [see definition of purposely].

¹ If applicable, instruct on the affirmative defense provisions set forth in RSA 635:1, I.

² *State v Thaxton*, 120 N.H. 526 (1980)

THEFT

RSA 637:3: Theft by Unauthorized Taking or Transfer

The defendant is charged with the crime of theft by unauthorized taking or transfer. The definition of this crime has [three] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant obtained or exercised unauthorized control over the property of another; and
2. The defendant acted with a purpose to deprive another of the property; and
3. The property had a value in excess of: [\$1,000 class A felony][\$500 class B felony][under \$500 misdemeanor]¹.

These are the elements of the crime of theft by unauthorized taking. Certain words in the definition need to be further defined.

“To obtain” means to bring about a transfer of possession or of some other legally recognized interest in property².

“Property” means anything of value.³

“Purpose to deprive” means [a conscious object or intention to [withhold the property permanently, or for so long or under such circumstances that a substantial portion of its economic value or the use and benefit of it would be lost][to restore the property only upon payment of a reward or compensation][to dispose of the property under circumstances making it unlikely that the owner would recover it.]

¹ RSA 637:2 V (a) [Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grad of the offense.]

² For further definition see RSA 637:2, II.

³ For further definition see RSA 637 :2, I.

RSA 637:5: Theft by Extortion¹
(Class B felony regardless of value of property)

The defendant is charged with the crime of theft by extortion. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant obtained or exercised unauthorized control over the property of another; and
2. The defendant did so through extortion, that is he threatened [to cause physical harm to any person][to cause harm to property at any time][to subject any person to physical confinement or restraint]; and
3. The defendant acted with a purpose to deprive another of the property.

These are the elements of the crime of theft by extortion. Certain words in the definition need to be further defined.

“To obtain” means to bring about a transfer of possession or of some other legally recognized interest in property²

“Property” means anything of value³

“Purpose to deprive” means [a conscious object or intention to [withhold the property permanently, or for so long or under such circumstances that a substantial portion of its economic value or the use and benefit of it would be lost][to restore the property only upon payment of a reward or compensation][to dispose of the property under circumstances making it unlikely that the owner would recover it.]

¹ RSA 637:11, II(c)

² RSA 637:2, II

³ RSA 637:2, I

RSA 637:5: Theft by Extortion¹
(Level of offense depends on value of property)

DRAFT

The defendant is charged with the crime of theft by extortion. The definition of this crime has [three][four][five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant obtained or exercised unauthorized control over the property of another;^{2, 3} and
2. The defendant did so through extortion, in that he threatened ⁴[If appropriate, instruct that threats need not be express, but may be implied in words and/or conduct. *State v. O'Flynn*, 126 N.H. 706 (1985).] to [insert the appropriate statutory variant from RSA 637:5, II(a) through (i):
- [3. The defendant acted with a purpose to deprive another of the property.]
- [4. The property had a value⁵ in excess of [\$1,000 Class A Felony][\$500 Class B Felony].]
- [5. The property was taken pursuant to a scheme or course of conduct.⁶]

These are the elements of the crime of theft by extortion. Certain words in the definition need to be further defined.

“To obtain” means to bring about a transfer of possession or of some other legally recognized interest in property.⁷

“Property” means anything of value⁸.

“Purpose to deprive” means⁹ a conscious object to [withhold the property permanently, or for so long or under such circumstances that a substantial portion of its economic value or the use and benefit of it would be lost] [to restore the property only upon payment of a reward or compensation] [to dispose of the property under circumstances making it unlikely that the owner would recover it].

The value of property may be determined by any reasonable standard.¹⁰

¹ RSA 637:11

² RSA 637:2 I

³ RSA 637:2 IV The State is not required to prove the identity of the owner. *State v. Stanley*, 132 N.H. 571 (1989).

⁴ [If appropriate, instruct that threats need not be express, but may be implied in words and/or conduct. *State v. O'Flynn*, 126 N.H. 706 (1985).]

⁵ Minimum dollar value of property is not an element for misdemeanor theft. RSA 637:11, II.

⁶ Include this instruction in cases where separate thefts are aggregated pursuant to RSA 637:2, V(a). *State v. Sampson*, 120 N.H. 251 (1980); *State v. O'Flynn*, 126 N.H. 706 (1985); *State v. Weeks*, 137 N.H. 687 (1993).]

⁷ RSA 637:2, II.

⁸ RSA 637:2, I

⁹ It is not necessary for the State to elect or prove which variant of purpose to deprive applied. Thus, unless the indictment specifies one of the variants. In that case, only the specified variant should be included in the instruction. *State v. Cote*, 126 N.H. 514 (1985); *State v. Erickson*, 129 N.H. 515 (1987).

¹⁰ *State v. Belanger*, 114 N.H. 616; *State v. Hammell*, 128 N.H. 787 (1986).

FRAUD

RSA 638:1, I (a): Altering a Writing or Uttering an Altered Writing

The defendant is charged with the crime of forgery. The definition of forgery has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [altered a writing of another person] [uttered an altered writing of another person];
2. The defendant was without authority to do so;
3. The writing was or purported to be [a security, revenue stamp, or any other instrument issued by a government, or any agency thereof] [a check, an issue of stocks, bonds, or any other instrument representing an interest in or a claim against property, or a pecuniary interest in or other claim against any person or enterprise];¹
4. The defendant acted [with purpose to defraud anyone]² [with knowledge that he was facilitating a fraud to be perpetrated by anyone]; and
5. The defendant acted purposely.

Those are the elements of the crime of forgery. Certain words in the definition need to be further defined.

“Writing” means printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege or identification.

“To utter a writing” means to offer the writing, whether it is accepted or not, with the representation, by words or actions, that the writing is genuine³.

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice⁴.

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly]

¹ Narrower definition given here is for class B felonies; broader definition applies to class B misdemeanors. Compare RSA 638:1, III with 638:1, II. *State v. Allegra*, 129 N.H. 720 (1987).

² *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified)

³ BLACK’S LAW DICTIONARY 1387 (5th ed. 1979)

⁴ BLACK’S LAW DICTIONARY 381 (5th ed. 1979); *see also* Commentary to Model Penal Code §224.1 at 298-99 (“The offense of forgery extends beyond cases of pure pecuniary fraud to protect the integrity of documents generally.”); *State v. Young*, 46 N.H. 266 (1865).

RSA 638:1, I (b): Unaltered Writing Purporting to be the Act of Another

The defendant is charged with the crime of forgery. The definition of forgery has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

DRAFT

1. The defendant [made, completed, executed, authenticated, issued, transferred, published, or, otherwise uttered] any writing;
2. The writing purported to be the act of another person;
3. The writing was or purported to be [a security, revenue stamp, or any other instrument issued by a government, or any agency thereof] or [a check, an issue of stocks, bonds, or any other instrument representing an interest in or a claim against property, or a pecuniary interest in or other claim against any person or enterprise];¹
4. The defendant acted [with purpose to defraud anyone]² or [with knowledge that he was facilitating a fraud to be perpetrated by anyone]. And
5. The defendant acted purposely.

Those are the elements of the crime of forgery. Certain words in the definition need to be further defined.

“Writing” means printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege or identification.

“To utter a writing” means to offer the writing, whether it is accepted or not, with the representation, by words or actions, that the writing is genuine³.

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice⁴.

“Purposely” means [see definition of purposely].

“Knowingly”[see definition of knowingly]

¹ Narrower definition given here is for class B felonies; broader definition applies to class B misdemeanors. *Compare* RSA 638:1, III with 638:1, II

² *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified.)

³ BLACK’S LAW DICTIONARY 1387 (5th ed. 1979).

⁴ BLACK’S LAW DICTIONARY 381 (5th ed. 1979); *see also* Commentary to Model Penal Code §224.1 at 298-99 (“The offense of forgery extends beyond cases of pure pecuniary fraud to protect the integrity of documents generally.”); *State v. Young*, 46 N.H. 266 (1865).

RSA 638:1, I (b): Forgery—Unaltered Writing Fraudulent Execution

The defendant is charged with the crime of forgery. The definition of forgery has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [made, completed, executed, authenticated, issued, transferred, published, or, otherwise uttered] any writing;
2. The writing purported to have been executed [at a time, at a place in a numbered sequence] other than was in fact the case;
3. The writing was or purported to be [a security, revenue stamp, or any other instrument issued by a government, or any agency thereof] or [a check, an issue of stocks, bonds, or any other instrument representing an interest in or a claim against property, or a pecuniary interest in or other claim against any person or enterprise];¹
4. The defendant acted [with purpose to defraud anyone]² or [with knowledge that he was facilitating a fraud to be perpetrated by anyone];and
5. The defendant acted purposely.

Those are the elements of the crime of forgery. Certain words in the definition need to be further defined.

“A writing” means printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege or identification.

“To utter a writing” means to offer the writing, whether it is accepted or not, with the representation, by words or actions, that the writing is genuine³.

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice.⁴

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly]

¹ Narrower definition given here is for class B felonies; broader definition applies to class B misdemeanors. Compare RSA 638:1, III with 638:1, II

² *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified)

³ BLACK’S LAW DICTIONARY 1387 (5th ed. 1979).

⁴ BLACK’S LAW DICTIONARY 381 (5th ed. 1979); see also, COMMENTARY TO MODEL PENAL CODE §224.1 at 298-99 (“The offense of forgery extends beyond cases of pure pecuniary fraud to protect the integrity of documents generally.”); *State v. Young*, 46 N.H. 266 (1865).

RSA 638:1, I (b): Forgery—Fraudulent Copy

The defendant is charged with the crime of forgery. The definition of forgery has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [made, completed, executed, authenticated, issued, transferred, published, or, otherwise uttered] any writing;
2. The writing purported to be a copy of an original when no such original existed;
3. The writing was or purported to be [a security, revenue stamp, or any other instrument issued by a government, or any agency thereof] or [a check, an issue of stocks, bonds, or any other instrument representing an interest in or a claim against property, or a pecuniary interest in or other claim against any person or enterprise]¹;
4. The defendant acted [with purpose to defraud anyone]² or [with knowledge that he was facilitating a fraud to be perpetrated by anyone; and .
5. The defendant acted purposely

Those are the elements of the crime of forgery. Certain words in the definition need to be further defined.

“A writing” means printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege or identification.

“To utter a writing” means to offer the writing, whether it is accepted or not, with the representation, by words or actions, that the writing is genuine.³

“To defraud” means to deprive a person of property or any interest, estate, or right, by fraud, deceit or artifice.⁴

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly]

¹ Narrower definition given here is for class B felonies; broader definition applies to class B misdemeanors. *Compare* RSA 638:1, III with 638:1, II

² *State v. DeMatteo*, 134 N.H. 296 (1991) (specific person intended to be defrauded need not be identified).

³ BLACK’S LAW DICTIONARY 1387 (5th ed. 1979).

⁴ BLACK’S LAW DICTIONARY 381 (5th ed. 1979). *Also see*, Commentary to Model Penal Code §224.1 at 298-99 (“The offense of forgery extends beyond cases of pure pecuniary fraud to protect the integrity of documents generally.”); *State v. Young*, 46 N.H. 266 (1865).

RSA 638:2: Fraudulent Handling of Recordable Writings

The defendant is charged with the crime of fraudulent handling of recordable writings. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [falsified][destroyed][removed][concealed] a writing;
2. The writing was any [will][deed][mortgage][security instrument][other writing] for which the law provides public recording;
3. The defendant acted with a purpose to deceive or injure anyone; and
4. The defendant acted purposely.

. Those are the elements of the crime of fraudulent handling of recordable writings. Certain words in the definition need to be further defined.

“Purposely” means [see definition of purposely].

RSA 638:3: Tampering with Public or Private Records

This defendant is charged with the crime of tampering with public or private records. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [falsified][destroyed][removed][concealed] a [public][private] [writing][record];
2. The defendant knew that he had no privilege to do so;
3. The defendant acted [deceive][injure]] anyone or to conceal any wrongdoing; and
4. The defendant acted purposely.

Those are the elements of the crime of tampering with public or private records. Certain words in the definition need to be further defined.

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly]

RSA 638:4: Issuing Bad Checks (Single check)

The defendant is charged with the crime of issuing a bad check. The definition of this offense has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant {issued or passed} a check for the payment of money; and
2. Payment was refused by the bank¹ on which the check was drawn; and
3. The defendant knew or believed that the check would not be paid by the bank^{2 3}; and
- [4. The face amount of the check[exceeded \$1,000 [class A felony]] [exceeded \$500 [class B felony]]]; and
- [4. The defendant had been convicted of an offense under RSA 638:4 within the twelve months preceding the conduct at issue [class A misdemeanor]]; and
5. The defendant acted knowingly.

Those are the elements of the crime of issuing a bad check. Certain words in the definition need to be further defined.

“Knowingly” means.[see definition of knowingly].

¹ ¹ Substitution of “bank” for “drawee” appears correct, given that a check is defined as a draft drawn on a bank. U.C.C. art. 3 §104(f)

² Substitution of “bank” for “drawee” appears correct, given that a check is defined as a draft drawn on a bank. U.C.C. art. 3 §104(f).

³ RSA 626:7,II

RSA 638:4: Issuing Bad Checks (Course of conduct)

The defendant is charged with the crime of issuing bad checks. The definition of this offense has six parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant {issued or passed} checks for the payment of money ;and
2. Payment for the checks was refused by the bank¹ on which the check was drawn; and
3. The defendant knew or believed that the checks would not be paid by the bank]; and
4. The defendant {issued or passed} the checks pursuant to one {scheme or course of conduct}; and²
5. The face amount of the checks, totaled together [exceeded \$1,000] [exceeded \$500]; and
6. The defendant acted knowingly.

Those are the elements of the crime of issuing a bad check. Certain words in the definition need to be further defined.

“Knowingly” means.[see definition of knowingly].

¹ Substitution of “bank” for “drawee” appears correct, given that a check is defined as a draft drawn on a bank. U.C.C. art. 3 §104(f).

² RSA 638:4, IV(c). For definitions of scheme or course of conduct, see *State v. O’Flynn*, 126 N.H. 706 (1985); *State v. Weeks*, 137 N.H. 687 (1993).

RSA 638:5: Fraudulent Use of a Credit Card

The defendant is charged with the crime of fraudulent use of a credit card. The definition of this offense has [three][four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant used a credit card to obtain [property] [services];and
2. The card { was stolen or had been revoked or canceled }; and
3. The defendant's use of the card was unauthorized by [the issuer of the card][the person to whom the card was issued]
4. The value of the property or services exceeded \$1,000 [Class A felony] \$500[Class B felony].]

Those are the elements of the crime of fraudulent use of a credit card. Certain words in the definition need to be further defined.

“Credit card” means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

“Purposely” means[see definition of purposely].

“Knowingly” means.[see definition of knowingly].

RSA 638:11: Misapplication of Property (by a fiduciary)

The defendant is charged with the crime of misapplication of property. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. Certain property was entrusted to the defendant as a fiduciary; and
2. The defendant dealt with the property in a manner that constituted a breach of his duty ;and
3. The defendant dealt with the property in a manner that involved a substantial risk of loss [to the owner of the property] [to a person for whose benefit the property was entrusted];¹ and
4. The defendant acted knowingly.

These are the elements of the crime of misapplication of property. Certain words in the definition need to be further defined.

“Fiduciary” means any person carrying on fiduciary functions on behalf of a corporation or other organization that is a fiduciary.

“Property” means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor services, or otherwise containing any thing or value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water, and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by him².

“Knowingly” means.[see jury instructions for knowingly].

¹ *State v. Merski*, 123 N.H. 564 (1983).

² RSA 637:2,I

RSA 638:11: Misapplication of Property (of the government or a financial institution)

The defendant is charged with the crime of misapplication of property. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant dealt with certain property of {the government, a financial institution} in a manner that violated his duty as an employee of that institution; and
2. The defendant dealt with the property in a manner that involved a substantial risk of loss to the owner of the property; and
3. The defendant acted knowingly.

Those are the elements of the crime of misapplication of property. Certain words in the definition need to be further defined.

“Government” means the United States, any state or any county, municipality or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government or formed pursuant to interstate compact or international treaty.¹

“Property” means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor services, or otherwise containing any thing or value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water, and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by him.²

“Knowingly” means..[see definition of knowingly].

¹ RSA 637:10,IV

² RSA 637:2,I.

OFFENSES AGAINST THE FAMILY

DRAFT

RSA 639:1: Bigamy

The defendant is charged with the crime of bigamy. This offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant married [insert name of person];and
2. The defendant already had a spouse and was not legally eligible to marry; and
3. The defendant acted knowingly.

Those are the elements of the crime of bigamy. Certain words in the definition need to be further defined.

“Knowingly” means....[see definition of knowingly].

RSA 639:2: Incest

DRAFT

The defendant is charged with the crime of incest. This offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [married another] [lived together with another person under the representation of being married] [had sexual intercourse with another person]; and
2. The other person was the defendant's [ancestor] [descendant] [brother of the whole or half blood] [sister of the whole or half blood] [aunt] [uncle] [nephew] [niece]; and
3. [The defendant was 18 years of age or older] [The defendant was under the age of 18 and the other party was at least 3 years older at the time of the act]; and
4. The defendant acted knowingly.

Those are the elements of the crime of incest. Certain words in the definition need to be further defined.

“Knowingly” means....[see definition of knowingly].

RSA 639:3, I: Endangering the Welfare of Child or Incompetent
(Violation of Duty of Care)

The defendant is charged with the crime of endangering the welfare of {a child or an incompetent}. This offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant owed a duty of care, protection or support to {a child under 18 years of age or an incompetent person};
2. The defendant purposely violated this duty of care, protection or support;
3. By this conduct, the defendant endangered the welfare of the {child or incompetent}.

These are the four elements of the crime of endangering the welfare of {a child or an incompetent}. Certain words in the definition need to be further defined.

“Purposely” means....[see definition of purposely].

“Knowingly” means....[see definition of knowingly].

RSA 639:3, I: Endangering the Welfare of Child or Incompetent (Inducement)

The defendant is charged with the crime of endangering the welfare of {a child or an incompetent}. This offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant induced {a child under 18 years of age or an incompetent person} to engage in conduct that endangered the {child's or incompetent's} health or safety; and
2. The defendant's conduct endangered the welfare of that {child or incompetent}; and
3. The defendant acted knowingly.

These are the three elements of the crime of endangering the welfare of {a child or an incompetent} by inducement. Certain words in the definition need to be further defined.

“Knowingly” means....[see definition of knowingly].

RSA 639:3, II: Endangering the Welfare of Child (Tattooing)

The defendant is charged with the crime of endangering the welfare of a child by tattooing the child. This offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant tattooed a child under 18 years of age; and
2. The defendant acted knowingly.

These are the two elements of the crime of endangering the welfare of a child by tattooing. Certain words in the definition need to be further defined.

“Knowingly” means....[see definition of knowingly].

RSA 639:3, III: Endangering the Welfare of Child (Solicitation of Sexual Activity)

The defendant is charged with the crime of endangering the welfare of a child under 16 by soliciting the child to engage in sexual activity for the purpose of creating a visual representation. This offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant solicited a person to engage in sexual activity for the purpose of creating a visual representation of the sexual activity; and
2. The person was under 16 years of age; and
3. The defendant acted purposely.

These are the three elements of the crime of solicitation of sexual activity. Certain words need to be further defined.

“Sexual activity” means [insert statutory definition RSA 649-A:2, III].

“Visual representation” means [insert statutory definition RSA 649-A:2, IV].

“Purposely” means ... [see definition of purposely]

RSA 639:3, III: Endangering the Welfare of Child (Solicitation of Sexual Penetration)

The defendant is charged with the crime of endangering the welfare of a child under 16 by soliciting the child to engage in sexual penetration. This offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant solicited a person to engage in sexual penetration; and
2. The person was under 16 years of age; and
3. The defendant acted purposely.

These are the three elements of the crime of solicitation of sexual penetration. Some of the words used in these elements need to be further defined.

“Sexual penetration” means [insert statutory definition RSA 632-A:1,V].

“Purposely” means ... [see definition of purposely]

RSA 639:4: Non-Support

DRAFT

The defendant is charged with the crime of non-support. This offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was legally obligated to provide support to his { spouse, child, or dependant }; and
2. The defendant had the ability to provide support;
3. The defendant failed to provide support; and
4. The defendant acted knowingly

Those are the elements of the crime of non-support. Certain words in the definition need to be further defined.

“Knowingly” means....[see definition of knowingly].

RSA 639:5: Concealing Death of a Newborn

The defendant is charged with the crime of concealing the death of a newborn. This offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant concealed the corpse of a newborn child; and
2. The defendant acted knowingly.

These are the two elements of the crime of concealing the death of a newborn. Certain words in the definition need to be further defined.

“Knowingly” means....[see definition of knowingly]

CORRUPT PRACTICES

DRAFT

RSA 640:2, 1(a) Bribery [offering of]

The defendant is charged with the crime of bribery. The definition of this crime has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [promised] [offered] [gave] a pecuniary benefit to another person; and
2. The other person was a [public servant] [party official] [voter]; and
3. The pecuniary benefit was intended to influence the recipient's action, decision, recommendation or other exercise of discretion in his capacity as a [public servant] [party official] [voter]; and
4. The defendant acted purposely, that is, that the defendant had the conscious object or specific intent to [promise] [offer] [give] a pecuniary benefit to a [public servant] [party official] [voter] to influence the recipient's conduct in his official capacity.

This is the definition of bribery. Certain words in the definition need to be further explained:

A "public servant" means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

A "party official" means any person who holds any post in a political party whether by election, appointment or otherwise.

"Pecuniary benefit" means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. However, "pecuniary benefit" does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

"Purposely" means [see definition of purposely.]

RSA 640:2, I (b) Bribery [failure to report])

DRAFT

The defendant is charged with the crime of failing to report an offer of a bribe. The definition of this crime has four parts or elements, each of which the State must prove beyond a reasonable doubt. Thus the State must prove that:

1. The defendant was a [public servant] [party official] [voter] [candidate for electoral office]; and
2. The defendant was offered or promised a pecuniary benefit for the purpose of influencing his action, decision, recommendation or other exercise of discretion in his capacity as a [public servant] [party official] [voter] [candidate for electoral office]; and
3. The defendant failed to report to a law enforcement officer that he had been offered or promised a pecuniary benefit for the purpose of influencing his action, decision, recommendation or other exercise of discretion in his capacity as a [public servant] [party official] [voter]; [candidate for electoral office].

This is the definition of the crime of bribery. Certain words in the definition need to be further explained.

A “public servant” means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his/her election, appointment or other designation as such, although he/she may not yet officially occupy that position. A person is a candidate for electoral office upon the announcement of his/her candidacy.

A “party official” means any person who holds any post in a political party whether by election, appointment or otherwise.

“Pecuniary benefit” means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. However, “pecuniary benefit” does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

“Knowingly” means [see definition of knowingly.]

RSA 640:2, I (b) Bribery soliciting, accepting]

DRAFT

The defendant is charged with the crime of bribery. The definition of this crime has three parts or elements, each of which the State must prove beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was a [public servant] [party official] [candidate for electoral office] [voter]; and
2. The defendant [solicited] [accepted] [agreed to accept] a pecuniary benefit from another person; and
3. The defendant knew or believed that the other person's purpose in giving or offering to give the pecuniary benefit was to influence the defendant's action, decision, recommendation or other exercise of discretion in the defendant's capacity as a [public servant] [party official] [voter].

This is the definition of the crime of bribery. Certain words in the definition need to be further explained.

A "public servant" means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

A person is a "candidate for electoral office" upon his public announcement of his candidacy.

A "party official" means any person who holds any post in a political party whether by election, appointment or otherwise.

"Pecuniary benefit" means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. However, "pecuniary benefit" does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

"Knowingly" means [see definition of knowingly.]

RSA 640:3, I (a) Improper influence [threats]

DRAFT

The defendant is charged with the crime of improper influence. The definition of this crime has three parts or elements, each of which the State must prove beyond a reasonable doubt. Thus the State must prove that:

1. The defendant made a threat of harm to another person; and
2. The other person was a [public servant] [party official] [voter]; and
3. The threat of harm was intended to influence the recipient's action, decision, opinion, nomination, vote, recommendation or other exercise of discretion in his capacity as a [public servant] [party official] [voter].

This is the definition of the crime of improper influence. Certain words in the definition need to be further explained.

A "public servant" means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

A "party official" means any person who holds any post in a political party whether by election, appointment or otherwise.

"Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the [public servant] [party official] [voter] is interested.

"Purposely" means [see definition of purposely.]

RSA 640:3, I (b) Improper influence [private communication]

DRAFT

The defendant is charged with the crime of improper influence. The definition of this crime has four parts or elements, each of which the State must prove beyond a reasonable doubt. Thus the State must prove that:

1. The defendant made a representation, argument, or other communication to a public servant; and
2. The public servant had or was expected to have before him a judicial or administrative proceeding in which he would exercise official discretion; and
3. The representation, argument, or other communication was made privately, and
4. The purpose of the representation, argument, or other communication was to influence the public servant's discretion on the basis of considerations other than those authorized by law.

This is the definition of the crime of improper influence. Certain words in the definition need to be further explained.

A "public servant" means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

A "party official" means any person who holds any post in a political party whether by election, appointment or otherwise.

"Purposely" means [see definition of purposely.]

RSA 640:3, I(c) Improper influence [failure to report private communications]

The defendant is charged with the crime of failing to report an attempt to improperly influence him. The definition of this crime has five parts or elements, each of which the State must prove beyond a reasonable doubt. Thus the State must prove that:

1. The defendant was a public servant or party official who had or was expected to have official discretion in a judicial or administrative proceeding; and
2. Another person addressed a representation, argument or other communication to the defendant; and
3. The communication was made privately, and
4. The purpose of the communication was to influence the defendant's action, decision, opinion, recommendation, nomination, vote or other exercise of discretion on the basis of considerations other than those authorized by law; and
5. The defendant failed to report the private communication to a law enforcement officer.

This is the definition of the crime of improper influence. Certain words in the definition need to be further explained.

A "public servant" means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his/her election, appointment or other designation as such, although he/she may not yet officially occupy that position.

A "party official" means any person who holds any post in a political party whether by election, appointment or otherwise.

"Knowingly" means [see definition of knowingly.]

RSA 640:3, I (c) Improper influence [failure to report threats]

DRAFT

The defendant is charged with the crime of failing to report an attempt to improperly influence him. The definition of this crime has four parts or elements, each of which the State must prove beyond a reasonable doubt. Thus the State must prove that:

1. The defendant was a [public servant] [party official]; and
2. The defendant was threatened with harm by another person; and
3. The purpose of the threat of harm was to influence the defendant's action, decision, recommendation, vote, nomination, opinion or other exercise of discretion in his capacity as a [public servant] [party official];
4. The defendant failed to report the threat to a law enforcement officer.

This is the definition of the crime of improper influence. Certain words in the definition need to be further explained.

A "public servant" means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his/her election, appointment or other designation as such, although he/she may not yet officially occupy that position.

A "party official" means any person who holds any post in a political party whether by election, appointment or otherwise.

"Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the [public servant] [party official] is interested.

"Knowingly" means [see definition of knowingly.]

RSA 640:4, I Compensation for past acts [soliciting, accepting])

DRAFT

The defendant is charged with the crime of improper solicitation of compensation. The definition of this crime has three parts or elements, each of which the State must prove beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was a public servant; and
2. The defendant [solicited] [accepted] [agreed to accept] a pecuniary benefit from another person; and
3. The pecuniary benefit was solicited or accepted in return for the defendant's past decision, recommendation, opinion, nomination, vote or other exercise of discretion in the defendant's official capacity or for having violated his/her duty.

This is the definition of the crime of improper solicitation of compensation. Certain words in the definition need to be further explained.

A "public servant" means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

"Pecuniary benefit" means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. However, "pecuniary benefit" does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

"Purposely" means [see definition of purposely.]

RSA 640:4, II Compensation for past acts [paying, offering]

DRAFT

The defendant is charged with the crime of making or offering improper payments to a public servant. The definition of this offense has three parts or elements, each of which the State must prove beyond a reasonable doubt. Thus the State must prove:

1. The defendant [promised] [offered] [gave] a pecuniary benefit to another person; and
2. The other person was a public servant; and
3. The purpose of the pecuniary benefit was to compensate or reward the public servant for his past decision, recommendation, opinion, nomination, vote or other exercise of discretion, or for his breach of duty.

This is the definition of the crime of improper solicitation of compensation. Certain words in the definition need to be further explained.

A “public servant” means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

“Pecuniary benefit” means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. However, “pecuniary benefit” does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

“Purposely” means [see definition of purposely.]

RSA 640:5, I Gifts to public servants [soliciting, accepting]

DRAFT

The defendant is charged with the crime of improper solicitation or receipt of a gift. The definition of this crime has three parts or elements, each of which the State must prove beyond a reasonable doubt. Thus the State must prove that:

1. The defendant was a public servant; and
2. The defendant [solicited] [accepted] [agreed to accept] a pecuniary benefit from another person; and
3. The other person was someone who was or was likely to become interested in any matter or action pending or contemplated to come before the governmental body with which the defendant was affiliated; and

This is the definition of the crime of improper solicitation or receipt of a gift. Certain words in the definition need to be explained.

A “public servant” means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

“Pecuniary benefit” means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. However, “pecuniary benefit” does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

“Knowingly” means [see definition of knowingly.]

RSA 640:5, II Gifts to public servants [paying, offering]

The defendant is charged with the crime of making or offering improper gifts to a public servant. The definition of this crime has three parts or elements, each of which the State must prove beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [promised] [offered] [gave] a pecuniary benefit to another person; and
2. The other person was a public servant; and
3. The defendant was someone who was or was likely to become interested in any matter or action pending or contemplated to come before the governmental body with which the public servant was affiliated.

This is the definition of the crime of making or offering improper gifts to a public servant. Certain words in the definition need to be explained.

A “public servant” means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

“Pecuniary benefit” means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. However, “pecuniary benefit” does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

“Knowingly” means [see definition of knowingly.]

RSA 640:6 I Compensation for services [soliciting, accepting]

DRAFT

The defendant is charged with the crime of soliciting improper compensation. The definition of this crime has three parts or elements, each of which the State must prove beyond a reasonable doubt. Thus, the State must prove that”

- 1.The defendant was a [public servant] [party official] [candidate for electoral office] [voter];
- 2.The defendant [solicited] [accepted] [agreed to accept] a pecuniary benefit from another person;
3. The pecuniary benefit was [solicited] [accepted] in return for the defendant’s advice or other assistance in preparing or promoting a transaction, bill contract, claim or proposal as to which the defendant knew that he had or was likely to have the exercise of official discretion.

This is the definition of the crime of soliciting improper compensation for services. Certain words in the definition need to be further explained.

A “public servant” means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

A person is a “candidate for electoral office” upon his public announcement of his candidacy.

A “party official” means any person who holds any post in a political party whether by election, appointment or otherwise.

“Pecuniary benefit” means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. However, “pecuniary benefit” does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

“Purposely” means [see definition of purposely.]

RSA 640:7, I Purchase of public office [soliciting, accepting]

DRAFT

The defendant is charged with the crime of soliciting compensation to obtain public office for another person. The definition of this offense has two parts or elements, each of which the State must prove beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [solicited] [accepted] [agreed to accept] from another money or any other pecuniary benefit for himself, any other person or a political party; and
2. The money or pecuniary benefit was intended to compensate the defendant for his endorsement, nomination, appointment, approval or disapproval of any person for a position as a public servant or for the advancement of any public servant.

This is the definition of the crime of soliciting compensation to obtain public office for another person. Certain words in the definition need to be further explained.

A “public servant” means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

“Pecuniary benefit” means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. However, “pecuniary benefit” does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

“Purposely” means [see definition of purposely.]

RSA 640:7, II Purchase of public office [offering]

The defendant is charged with the crime of offering compensation to obtain public office. The definition of this crime has two parts or elements, each of which the State must prove beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [gave] [offered] [promised] money or any other pecuniary benefit to any other person or a political party; and
2. The money or pecuniary benefit was intended as compensation for the endorsement, nomination, appointment, approval or disapproval of any person for a position as a public servant or for the advancement of any public servant.

This is the definition of the crime of offering compensation to obtain public office. Certain words in the definition need to be further explained.

A “public servant” means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, jurors and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

A “party official” means any person who holds any post in a political party whether by election, appointment or otherwise.

“Pecuniary benefit” means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain. However, “pecuniary benefit” does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

“”Purposely” means [see definition of purposely.]

FALSIFICATION IN OFFICIAL MATTERS

RSA 641:1, I (a) Perjury (False Statement)

The defendant is charged with the crime of perjury. The definition of this crime has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant made a false statement under oath or affirmation or swore or affirmed the truth of a statement previously made; and
2. The statement was made during an official proceeding; and¹
3. The defendant did not believe the statement to be true; and
4. The statement was material to the proceeding in which it was made; and²
5. The defendant acted knowingly.³

These are the elements of the crime of perjury. Certain words in the definition need to be further defined.

“A statement provided under oath or affirmation” means testimony taken after the person either swears or affirms that the testimony to be provided will be true. There is no difference between swearing and affirming.

“An official proceeding” means any proceeding before a legislative, judicial, administrative, or other governmental body, or before an official authorized by law to take evidence under oath or affirmation, including a notary or other person taking evidence in connection with any such proceeding.

That the defendant did not believe the statement was true refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful⁴.

A statement is material if it is capable of affecting the course or outcome of the proceeding in which it is given. [A statement is not material if it is retracted in the course of the official proceeding before it became manifest that the falsification was exposed.]

“Knowingly” means [see definition of knowingly.]

¹ Defined in RSA 64:1:1, II; See, *State v. Sands*, 127 N.H. 570 (1983).

² *United States v. Gaudin*, 515 U.S. 506, 132 (1995)(whether materiality is a question for jury); compare RSA 641:1, II (materiality is a question of law for the court). The NH Supreme Court has not addressed this conflict

³ Arguably the elements of official proceeding and materiality are not ones as to which the *mens rea* requirement applies however, in the absence of Supreme Court authority for this proposition, this committee feels the cautious approach is to treat them as material elements. See RSA 626:2 I.

⁴ *Sands v Cunningham*, 617 F. Supp 1551 (D.N.H. 1985).

RSA 641:1, I (b) Perjury (Inconsistent Statements)

The defendant is charged with the crime of perjury. The definition of this crime has six parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant made inconsistent statements under oath or affirmation or swore or affirmed the truth of a statement previously made; and
2. The statements were made during an official proceeding; and¹
3. One of the inconsistent statements was false. The state need not allege or prove which of the statements was false, but only that one or the other was false; and
4. The defendant did not believe the statement to be true. The state need not allege or prove which statement the defendant did not believe to be true, but only that he did not believe one or the other statement to be true; and²
5. The statement was material to the proceeding in which it was made; and³
6. The defendant acted knowingly; and⁴

These are the elements of the crime of perjury. Certain words in the definition need to be further defined.

“Inconsistent statements” mean the statements contradict each other, or both statements cannot be true.

“A statement provided under oath or affirmation” means testimony taken after the person either swears or affirms that the testimony to be provided will be true. There is no difference between swearing and affirming.

“An official proceeding” means any proceeding before a legislative, judicial, administrative, or other governmental body, or before an official authorized by law to take evidence under oath or affirmation, including a notary or other person taking evidence in connection with any such proceeding.

‘That the defendant did not believe the statement was true’ refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.⁵

“A material statement” is capable of affecting the course or outcome of the proceeding in which it is given [A statement is not material if it is retracted in the course of the official proceedings before it became manifest that the falsification was exposed.]

“Knowingly” means [see definition of knowingly].

¹ Defined in RSA 641:1, II; See, *State v. Sands*, 127 N.H. 570 (1983).

² RSA 641:1, I (b)

³ *United States v. Gaudin*, 515 U.S. 506, (1995) (whether materiality is a question for jury); compare RSA 641:1, II (materiality is a question of law for the court). The NH Supreme Court has not addressed this conflict.

⁴ Arguably, the elements of official proceedings and materiality are not ones as to which the *mens rea* requirement applies. In the absence of Supreme Court authority for this proposition this committee feels the cautious approach is to treat them as material elements. See RSA 626:2 I.

⁵ *Sands v Cunningham*, 617 F. Supp. (D.N.H. 1985)

RSA 641:2, I: False swearing (False statement)

The defendant is charged with the crime of false swearing. The definition of this crime has [four][five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant made a false statement under oath or affirmation or swore or affirmed the truth of a statement previously made;
2. The statement was [made in an official proceeding] [was made with a purpose to mislead a public servant in performing his official function] [was one required by law to be sworn or affirmed before a notary or other person authorized to administer oaths]; and
3. The defendant did not believe the statement to be true; and
4. The defendant acted knowingly; and ¹
5. [The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed.]² and

These are the elements of the crime of false swearing. Certain words in the definition need to be defined:

A “statement provided under oath or affirmation” means testimony taken after the person either swears or affirms that the testimony to be provided will be true. There is no difference between swearing and affirming.

An “official proceeding” means any proceeding before a legislative, judicial, administrative, or other governmental body, or before an official authorized by law to take evidence under oath or affirmation, including a notary or other person taking evidence in connection with any such proceeding.

That “the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.³

“Knowingly” means [see definition of knowingly.]

¹ Arguably, the elements of official proceedings and materiality are not ones as to which the *mens rea* requirement applies, however in the absence of Supreme Court authority for this proposition, the committee feels the cautious approach is to treat them as material elements. See RSA 626:2 I.

² Include this element if there is evidence supporting a finding of retraction.

³ *Sands v Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985)

RSA 641:2, H: False swearing (Inconsistent statement)

The defendant is charged with the crime of false swearing. The definition of this crime has [four][five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant made inconsistent statements under oath or affirmation or swore or affirmed the truth of a statement previously made; and
2. One of the inconsistent statements was false. The state need not allege or prove which of the statements was false, but only that one or the other was false; and
3. The defendant did not believe the statement to be true. The State need not allege or prove which statement the defendant did not believe to be true, but only that he did not believe one or the other statement to be true; and¹
4. ;The defendant acted knowingly; and²
- [5. The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed.³]

These are the elements of the crime of false swearing. Certain words in the definition need to be further defined.

“A statement provided under oath or affirmation” means testimony taken after the person either swears or affirms that the testimony to be provided will be true. There is no difference between swearing and affirming.

“An official proceeding” means any proceeding before a legislative, judicial, administrative, or other governmental body, or before an official authorized by law to take evidence under oath or affirmation, including a notary or other person taking evidence in connection with any such proceeding.

“That the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.⁴

“Knowingly” means [see definition of knowingly].

¹ RSA 641:1, I(b)

² Arguably, the elements of official proceedings and materiality are not ones as to which the *mens rea* requirement applies, however in the absence of Supreme Court authority for this proposition, the committee feels the cautious approach is to treat them as material elements. See RSA 626:2 I.

³ Include this element if there is evidence supporting a finding of retraction.

⁴ *Sands v. Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985).

RSA 641:3-I: Unsworn falsification

The defendant is charged with the crime of unsworn falsification. The definition of this crime has [four][five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant made a false written statement;
2. The statement was made on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein were punishable;
3. The defendant did not believe the statement to be true;
4. The defendant acted knowingly; and ¹
4. The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed.]²

These are the elements of the crime of unsworn falsification. Certain words in the definition need to be further defined.

“That the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.³

“Knowingly” means [see definition of knowingly].

¹ Arguably, the elements of official proceedings and materiality are not ones as to which the *mens rea* requirement applies, however in the absence of Supreme Court authority for this proposition, the committee feels the cautious approach is to treat them as material elements. See RSA 626:2 I.

² Include this element if there is evidence supporting a finding of retraction.

³ *Sands v. Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985).

RSA 641:3, II (a): Unsworn falsification

The defendant is charged with the crime of unsworn falsification. The definition of this crime has [three][four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant made a false written statement; and
2. Which he did not believe to be true; and
3. The defendant acted with the purpose to deceive a public servant in the performance of his official function; and

[4. The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed]¹ .:

Made a false written statement which he did not believe to be true;

Knowingly created a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent the statement therein from being misleading;

Submitted or invited reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false;

These are the elements of the crime of unsworn falsification. Certain words in the definition need to be further defined.

A false statement must be in writing or involve a physical object such as a map or sample specimen.

“That the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.² It is not necessary for the statement to be sworn in order for the offense to be committed.

“Purposely” means [see definition of purposely].

¹ Include this element if there is evidence supporting a finding of retraction.

² *Sands v. Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985)

RSA 641:3, II (b): Unsworn falsification

The defendant is charged with the crime of unsworn falsification. The definition of this crime has [three][four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant knowingly created a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent the statement therein from being misleading; and
2. The defendant created a false impression knowingly; and
3. The defendant acted with the purpose to deceive a public servant in the performance of his official function; and
- [4. The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed]¹.

These are the elements of the crime of unsworn falsification. Certain words in the definition need to be further defined.

A false statement must be in writing or involve a physical object such as a map or sample specimen.

“That the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.² It is not necessary for the statement to be sworn in order for the offense to be committed.

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly].

¹ Include this element if there is evidence supporting a finding of retraction.

² *Sands v. Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985)

RSA 641:3, II (c): Unsworn falsification

The defendant is charged with the crime of unsworn falsification. The definition of this crime has [three][four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant knowingly submitted or invited reliance on any sample, specimen, map, boundary mark, or other object which ; and
2. The defendant knew this submission to be false; and
3. The defendant acted with the purpose to deceive a public servant in the performance of his official function; and
- [4. The defendant did not retract the falsification before it became manifest that the falsification was or would be exposed]¹.

These are the elements of the crime of unsworn falsification. Certain words in the definition need to be further defined.

A false statement must be in writing or involve a physical object such as a map or sample specimen.

“That the defendant did not believe the statement was true” refers to the defendant’s subjective belief. It means that the defendant did not honestly believe that the statement he gave or was about to give was truthful.² It is not necessary for the statement to be sworn in order for the offense to be committed.

“Purposely” means [see definition of purposely].

“Knowingly” means [see definition of knowingly]

¹ Include this element if there is evidence supporting a finding of retraction.

² *Sands v. Cunningham*, 617 F. Supp. 1551 (D.N.H. 1985)

RSA 641:4, I: False reports to law enforcement¹

DRAFT

The defendant is charged with the crime of false report to law enforcement. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant gave or caused to be given false information to a law enforcement officer; and
2. The defendant knew that the information was false and that he was giving it (or causing it to be given) to a law enforcement officer; and
3. The defendant acted with the purpose of inducing the officer to believe that another had committed an offense

These are the elements of the crime of false report to law enforcement.

“Knowingly” means [see definition of knowingly].

“Purposely” means [see definition of purposely.]

¹ *McGranahan v. Dahar*, 119 N.H. 758 (1979); *State v. Davis*, 133 N.H. 211 (1990)

RSA 641:4, II: False reports to law enforcement¹

The defendant is charged with the crime of false report to law enforcement. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant gave or caused to be given information to a law enforcement officer, and such information concerned [the commission of an offense; the danger from an explosion or other dangerous substance; and
2. The defendant knew [that the offense or danger did not occur][that he had no information relating to the offense or danger].

These are the elements of the crime of false report to law enforcement. Certain words need to be further defined:

“Knowingly” means [see definition of knowingly.]

1. *McGranahan v. Dahar*, 119 N.H. 758 (1979); *State v. Davis*, 133 N.H. 211 (1990).]

RSA 641:5, I: Tampering with Witnesses and Informants

The defendant is charged with the crime of tampering with witnesses and informants. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant believed that an official proceeding¹ or investigation was pending or was about to be instituted; and
2. The defendant attempted to induce or otherwise caused a person to: withhold any testimony, information, document, or thing][elude legal process summoning him to provide evidence][absent himself from any proceeding or investigation to which he had been summoned]; and
3. The defendant acted [knowingly][purposely].

These are the elements of the crime of tampering with witnesses and informants. Certain words in the definition need to be further defined.

“Knowingly” means [see definition of knowingly.]

“Purposely” means [see definition of purposely.]

¹ RSA 641:1, II

RSA 641:5, II: Tampering with Witnesses and Informants (Retaliation)

The defendant is charged with the crime of tampering with witnesses and informants by retaliation. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant committed an unlawful act; and
2. Such act was in retaliation for something done by another in his capacity as a witness or informant; and
3. The defendant acted knowingly or purposely.

These are the elements of the crime of tampering with witnesses and informants by retaliation. Certain words in the definition need to be further defined.

“Knowingly” means [see definition of knowingly.]

“Purposely” means [see definition of purposely.]

RSA 641:5, III: Tampering with Witnesses and Informants (Solicitation)

The defendant is charged with the crime of tampering with witnesses and informants by solicitation. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant { solicited, accepted, or agreed to accept) a benefit from another; and
2. The benefit was in consideration of the defendant's having [to testify (or inform) falsely][withhold any testimony, information, document, or thing][elude legal process summoning him to provide evidence]; and
3. The defendant acted knowingly.

These are the elements of the crime of tampering with witnesses and informants. Certain words need to be defined:

“Knowingly” means [see definition of knowingly.]

“Purposely” means [see definition of purposely.]

RSA 641:6, I: Falsifying Physical Evidence

DRAFT

The defendant is charged with the crime of falsifying physical evidence. The definition of the crime of falsifying physical evidence has three parts. The state must prove each part of the definition beyond a reasonable doubt. Thus, the state must prove:

1. The defendant believed that an official proceeding or investigation was pending or about to be instituted;¹ and
2. The defendant (altered) (destroyed) (concealed) (removed) physical evidence; and
3. The defendant's purpose in committing that act was to impair the verity or availability of the physical evidence in the proceeding (investigation).

These are the elements of the crime of falsifying physical evidence. Certain words need to be further defined.

“Official proceeding” means any proceeding before a legislative, judicial, administrative or other governmental body or official authorized by law to take evidence under oath or affirmation including a notary or other person taking evidence in connection with any such proceeding.

“Purposely” means [see definition of purposely.]

¹ The use of the word believed most likely requires proof of the defendant's subjective state of mind. *See State v. Maya* 127 NH 684.

RSA 641:6, II: Falsifying Physical Evidence

The defendant is charged with the crime of falsifying physical evidence. The definition of the crime of falsifying physical evidence has three parts. The State must prove each part of the definition beyond a reasonable doubt. Thus, the State must prove:

1. The defendant believed that an official proceeding or investigation was pending or about to be instituted,¹ and
2. The defendant [made][presented][used] physical evidence that [he][she] knew to be false; and
3. The defendant's purpose was to deceive a public servant who was or might have been engaged in such a proceeding or investigation.

These are the elements of the crime of falsifying physical evidence. Certain words need to be further defined.

“Official proceeding” means any proceeding before a legislative, judicial, administrative or other governmental body or official authorized by law to take evidence under oath or affirmation including a notary or other person taking evidence in connection with any such proceeding.

“A public servant means “any officer or employee of the state or any political subdivision thereof, including judges, legislators, consultants, jurors, and person otherwise performing a governmental function.

“Purposely” means [see definition of purposely.]

¹ The use of the word believed most likely requires proof of the defendant's subjective state of mind. *See State v. Maya* 127 NH 684.

RSA 641:7, I: Tampering with Public Records

The defendant is charged with the crime of tampering with public records. The definition of the crime of tampering with public records has two parts. The State must prove each part of the definition beyond a reasonable doubt. Thus, the State must prove:

1. The defendant [made a false entry in][made a false alternation to] a public record;
and
2. The defendant acted knowingly.

These are the elements of the crime of tampering with public records. Certain words need to be defined:

“A public records” means something belonging to, received by, or kept by the government for information or record.

“Knowingly” means [see definition of knowingly.]

RSA 641:7, II: Tampering with Public Records

The defendant is charged with the crime of tampering with public records. The definition of the crime of tampering with public records has three parts. The State must prove each part of the definition beyond a reasonable doubt. Thus, the State must prove:

1. The defendant presented or used some thing; and
2. The defendant knew it to be false; and
3. The defendant's purpose was that it be taken as a genuine part of the public record.

These are the elements of the crime of tampering with public records. Certain words need to be defined:

“A public record” means something belonging to, received by or kept by the government for information or record.

“Knowingly” means [see definition of knowingly.]

“Purposely” means [see definition of purposely.]

RSA 641:7, III: Tampering with Public Records

The defendant is charged with the crime of tampering with public records. The definition of the crime of tampering with public records has three parts. The State must prove each part of the definition beyond a reasonable doubt. Thus, the State must prove:

1. The defendant [destroyed][concealed][removed][impaired] a public record or part thereof; and
2. The defendant acting unlawfully; and
3. The defendant's purpose was to impair the truth or availability of the record.

These are the elements of the crime of tampering with public records. Certain words need to be defined:

“A public record” means something belonging to, received by or kept by the government for information or record.

“Purposely” means [see definition of purposely.]

“Unlawful” – to be further researched by the committee

RSA 641:8: False Filing with the Director of Charitable Trusts

The defendant is charged with the crime of false filing with the director of charitable trusts. The definition of the crime of false filing with the director of charitable trusts has two parts. The state must prove each part of the definition beyond a reasonable doubt. Thus the state must prove:

1. The defendant made a [false entry][false alteration] of a [registration statement] [annual report] [or other information] require to be filed with the director of charitable trusts ;and
2. The defendant acted knowingly.

These are the elements of the crime of false filing with the director or charitable trusts. Certain words need to be defined:

“Knowingly” means [see definition of knowingly.]

OBSTRUCTING GOVERNMENTAL OPERATIONS

RSA 642:1. Obstructing governmental operations

The defendant is charged with the crime of obstructing governmental operations. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant used force, violence, intimidation, or engaged in any other unlawful act¹; and
2. The defendant did so with a purpose to interfere with a public servant [performing][purporting to perform] an official function; and

These are the elements of the crime of obstructing governmental operations. Certain words in the definition need to be further defined.

[Under the laws of this State, it is unlawful to [insert description of alleged *actus reus*]. So, if a person engages in this conduct, he has committed an “unlawful act” within the meaning of the first part of this definition.]

A “public servant” means any officer or employee of the State or any political subdivision of the State [which includes [judges][legislators][consultants][jurors][persons otherwise performing a governmental function]. [A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.][A person is a candidate for elective office upon his public announcement of his candidacy.]²

“Purposely” means [see definition of purposely.]

¹ The final provision of this section, enumerating conduct excluded from the scope of this section, is not included in this instruction, on the grounds that any issue under this provision is properly addressed to the court and not to the jury.

² RSA 640:2, II(a)

RSA 642:2: Resisting arrest or detention

The defendant is charged with the crime of resisting arrest or detention. The definition of this crime has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant physically interfered with another person; and
2. The defendant knew¹ the other person was a law enforcement official; and
3. The official was trying to arrest or detain the [defendant] [another person]; and
4. The defendant acted [knowingly][purposefully].

These are the elements of the crime of resisting arrest or detention. Certain words in the definition need to be further defined.

As indicated, the interference must be physical. Verbal protests alone do not constitute resisting arrest or detention.

[A “law enforcement official” includes a probation or parole officer.]

It does not matter whether the arrest or detention was illegal. The State does not have to prove that there was a valid legal basis for the arrest.

“Knowingly” means [see definition of knowingly.]

“Purposely” means [definition of purposely.]

¹*State v. Reid*, 134 N.H. 418 (1991)

RSA 642:3, I(a)-(c): ~~Hindering apprehension or prosecution~~

The defendant is charged with the crime of ~~hindering apprehension or prosecution~~. The definition of this crime has ~~[two] [three]~~ parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [harbored or concealed another person][provided another person with a weapon, transportation, disguise or other means for avoiding arrest or apprehension][warned another person of impending discovery or apprehension][concealed, destroyed or altered any physical evidence that might have aided in the discovery, apprehension or conviction of another person][used force, intimidation or deception to obstruct anyone else from performing an act which might have aided in the discovery, apprehension, prosecution or conviction of another person]; and
2. The defendant acted with the purpose to¹ hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of that person for the commission of a crime. The State need not show that this was the defendant's sole intention; it need only show that this purpose was present; and
- [3. The defendant knew that the charge made or liable to be made against the other person was [murder] [a class A felony].]²

These are the elements of the crime of ~~hindering apprehension or prosecution~~. Certain words in the definition need to be further defined.

“Purposely” means [see definition of purposely.]

“Knowingly” means [see definition of knowingly.]

¹ It is not necessary for the State to elect or prove which variant of purpose applied. Thus., unless the State has specified one of the variants. In that case, only the specified variant should be included in the instruction. *State v. Cote*, 129 N.H. 515 (1987) (discussing “purpose to deprive” in theft cases.)

² The defendant need not know the legal classification for the underlying offense. *State v. Williams*, 143, N.H. 559 (1999).

RSA 642:3, I (f): ~~Hindering apprehension or prosecution~~ (wiretap)

The defendant is charged with the crime of ~~hindering apprehension or prosecution~~. The definition of this crime has ~~[three][four]~~ parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant knew that an investigative or law enforcement officer had been authorized or had applied for authorization under the laws of this State [to intercept a telephone conversation or other oral communication][to install and use a pen register or trap and trace device]¹; and
2. The defendant told or notified another person of this information; and
3. The defendant acted with the purpose to² hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of that person for the commission of a crime. The State need not show that this was the defendant's sole intention; it need only show that this purpose was present; and
- [4. The defendant knew that the charge made or liable to be made against the other person was [murder][a class A felony]³.

These are the elements of the crime of hindering apprehension or prosecution. Certain words in the definition need to be further defined.

“Knowingly” means [see definition of knowingly.]

“Purposely” means [see definition of purposely.]

¹ RSA 570-A, 570-B

² It is not necessary for the State to elect or prove which variant of purpose applied. Thus., unless the State has specified one of the variants. In that case, only the specified variant should be included in the instruction. *State v. Cote*, 129 N.H. 515 (1987) (discussing “purpose to deprive” in theft cases.)

³ The defendant need not know the legal classification for the underlying offense. *State v. Williams*, 143, N.H. 559 (1999).

RSA 642:4 Aiding Criminal Activity

The defendant is charged with the crime of aiding criminal activity. The definition of this crime has 3 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant aided another who has committed a crime; and
2. The aid provided by the defendant helped the other to profit or benefit from the crime; and ¹
3. The defendant acted purposely.

These are the elements of the crime of aiding criminal activity. Certain words need to be further defined:

“Purposely” means: see definition of purposely

¹ The statute itself gives an example of the type of aid that is prohibited. In a case where the aid provided is of this type, it may be appropriate to include this example in the jury instruction. There might be other types of aid rendered after the commission of a crime that are covered by this statute however, this statute is not intended to apply to the type of conduct covered by the hindering apprehension statute., See Report of the Commission to recommend Codification of Criminal Laws 587:4, at 94 (1969).

RSA 642:5 Compounding

DRAFT

The defendant is charged with the crime of compounding. The definition of this crime has 2 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

[1. The defendant solicited, accepted, or agreed to accept any benefit as consideration for refraining from initiating or aiding in a criminal prosecution; and]

[1. The defendant conferred, agreed to confer, or offered any benefit to another as consideration for such person refraining from initiating or aiding in a criminal prosecution; and]

2. The defendant acted knowingly.

It is an affirmative defense that the value of the benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for the loss caused, or to be caused by the offense.

This is the definition of the crime of compounding. Certain words need to be further defined.

“Knowingly” means: see definition of knowingly

RSA 642:6 Escape

DRAFT

The defendant is charged with the crime of escape. The definition of this crime has [3][4][5] parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant was in official custody; and
2. The defendant escaped or got away; and
- [3.] To effect his/her escape, the defendant employed force against any person or threatened any person with a deadly weapon; and
- [4.] The deadly weapon was a firearm; and
- [5.] The defendant did so knowingly.

These are the elements of the crime of escape. Certain words need to be further defined:

“Official custody” means arrest, custody in a penal institution, an institution for confinement of juvenile offenders or any other confinement pursuant to an order of a court.

“Deadly weapon” – see definition of deadly weapon.

“Firearm” – means a weapon designed to or capable of discharging a shot by means of gunpowder.¹

“Knowingly” – see definition of knowingly.

¹ See *State v Beaudette* 124 N.H. 579, 581 (1984)
State v Taylor 136 N.H. 131,133 (1992)

RSA 642:7 I Providing Implements For Escape Or Contraband

The defendant is charged with the crime of providing implements of escape [contraband] to a person in official custody. The definition of this crime has 2 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant [facilitated escape of a person in official custody][provided a person in official custody with anything that might facilitate that person's escape] [provided a person in official custody with anything that person was prohibited by law or reg. from possessing]; and
2. The defendant did so knowingly.

These are the elements of the crime of providing implements of escape or contraband. Certain words need to be further defined:

“Official custody” means arrest, custody in a penal institution, an institution for confinement of juvenile offenders or any other confinement pursuant to an order of the court.

“Knowingly” see definition of knowingly.

DRAFT

RSA 642:8- Bail Jumping

The defendant is charged with the crime known as bail jumping. The definition of the crime has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was released with or without bail; and
2. The defendant was [required, by the conditions of [his][her] release to appear before the court] [required by court order to surrender to serve a sentence]; and
3. The defendant failed to appear as required; and
4. The defendant was released in connection with a charge [punishable by death, life imprisonment, or imprisonment of a maximum term of 15 years or more][punishable by imprisonment for a term of more than one year, but less than 15 years][a class A or class B misdemeanor][a violation]; and
5. The defendant acted knowingly.

[Affirmative Defense]

There is an affirmative defense to the crime of bail jumping which has been raised Thus,. The defendant has the burden of proving this affirmative defense to you by a preponderance of the evidence. The definition of this affirmative defense has three parts, or elements. Thus, to establish this defense, the defendant must prove that:

1. Uncontrollable circumstances prevented [him][her] from appearing before the court as required; and
2. The defendant did not contribute to the creation of such circumstances in reckless disregard of the requirement that [he][she] appear; and
3. The defendant appeared before the court as soon as the uncontrollable circumstances ceased to exist.

Proof by a preponderance of the evidence means that the evidence presented by the defendant in support of the affirmative defense has greater weight or is more credible or convincing than the evidence to the contrary.]

These are the elements of the crime of bail jumping. Certain words in the definition need to be further defined.

“Knowingly” means [see definition of knowingly.]

RSA 642:9, I Assault By Prisoner

DRAFT

The defendant is charged with the crime of assault while being held as a prisoner. The definition of this crime has 3 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant was being held in official custody; and
2. The defendant committed the crime of [first degree assault] [second degree assault] [simple assault] [simple assault during a fight entered into by mutual consent]; and
3. The defendant did so [purposely] [knowingly] [recklessly] [negligently].

These are the elements of the crime of assault by a prisoner. However, to find the defendant guilty of this offense, you must also find, beyond a reasonable doubt, that [he] [she] committed the elements of the crime of [first degree assault] [second degree assault] [simple assault] [simple assault during a fight entered into by mutual consent].

Certain words need to be further defined.

To act [purposely] [knowingly] [recklessly] [negligently] means: see appropriate instruction).

“Official custody” means custody in a penal institution or other confinement by an order of the court.

RSA 642:9, II Aggravated Assault By A Prisoner

DRAFT

The defendant is charged with the crime of aggravated assault by a prisoner. The definition of this crime has 5 parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant was an inmate; and
2. The defendant caused or attempted to cause an employee of [the department of corrections] [a facility operated by the department of corrections] [any law enforcement agency] to come into contact with [blood] [seminal fluid] [urine] [feces]; and
3. The defendant did so by throwing or expelling such fluid or material; and
4. The defendant knew or reasonably should have known that the person he/she caused to come into contact with such fluid or material was an employee of [the department of corrections] [a facility operated by the department of corrections] [any law enforcement agency]; and
5. The defendant acted with the purpose to harass, threaten, or alarm.

There are the elements of the crime of aggravated assault by a prisoner. Certain words need to be further defined.

An inmate is any adult committed by law to the custody of the commissioner of corrections; a person in pretrial confinement, or any person incarcerated in a local detention facility.¹

“Purposely” means: see definition of purposely

“Knowingly” means: see definition of knowingly

¹ See RSA 642:9, III(b) and RSA 21-H:2, VII

RSA 642:10 Obstructing Report Of Crime Or Injury

The defendant is charged with the crime of obstructing a report of a crime or injury. The definition of this crime has 3 parts of elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant [disconnected, damaged, disabled, or removed] [used physical force or intimidation to block access to] a telephone, radio, or other electronic communication device and
2. The defendant did so to obstruct, prevent, or interfere with [the report of a criminal offense, or bodily injury or property damage to any law enforcement agency] [a request for ambulance or emergency assistance to any governmental agency or hospital, doctor, or medial service provider]; and
3. The defendant acted purposely.

It is an affirmative defense to prosecution under this section that the defendant reasonably believed his conduct to be necessary to prevent a criminal false alarm.

These are the elements of the crime of obstructing a report of a crime or injury. Certain words need to be further defined:

“Purposely” means see definition of purposely.

ABUSE OF OFFICE

DRAFT

RSA 643:1: Official Oppression

The defendant is charged with the crime of official oppression. The definition of the crime of official oppression has three parts. The State must prove each part of the definition beyond a reasonable doubt. Thus, the State must prove:

1. The defendant was a public servant; and
2. The defendant knowingly [committed an unauthorized act which purported to be an act of [his][her] office] [refrained from performing a duty imposed on [him][her] by law or clearly inherent in the nature of [his][her] office]; and
3. The defendant's purpose was to [benefit [himself][herself]] [another] [harm another].

These are the elements of the crime of official oppression. Certain words in the definition need to be further defined.

“Knowingly” means [see definition of knowingly.]

“Purposely” means [see definition of purposely.]

“Public servant” means an officer or employee of the state or any political subdivision thereof, including judges, legislators, consultants, jurors, and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position. A person is a candidate for electoral office upon his public announcement of his candidacy.

RSA 643:2 Misuse of Information

The defendant is charged with the crime of misuse of information. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove:

1. The defendant was a public servant; and
2. The defendant [knew that an official action was contemplated][relied on information which [he] [she] acquired because of his office][relied on information which [he][she] acquired from another public servant]; and
3. [Acquired or divested [himself][herself] of a pecuniary interest that may have been affected by such [action][information]] [speculated or made a wager on the basis of such [action][information]] [aided another to acquire or divest [himself][herself] of a pecuniary interest on the basis of such [action][information]] [aided another to speculate or wager on the basis of such [action][information]];and
4. The defendant acted knowingly.

These are the elements of the crime of misuse of information. Certain words in the definition need to be further defined.

“Public servant” means an officer or employee of the state or any political subdivision thereof, including judges, legislators, consultants, jurors, and persons otherwise performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position. A person is a candidate for electoral office upon his public announcement of his candidacy

“Purposely” means [see definition of purposely.]

“Knowingly” means [see definition of knowingly.].

BREACHES OF THE PEACE AND OTHER OFFENSES

DRAFT
RSA 644:1, 1 (a) Engaging in a Riot

The defendant is charged with the crime of engaging in a riot. This offense has [four][five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant acted simultaneously with two or more other persons; and
2. The defendant engaged in tumultuous or violent conduct; and
3. The defendant's conduct created a substantial risk of causing public alarm; and
4. The defendant acted [purposely][recklessly].

For a class B felony, include the following:

- [5. [In the course of and as a result of the defendant's conduct, any person suffered physical injury, or substantial property damage or arson occurred][The defendant was armed with a deadly weapon].

These are the elements of the crime of engaging in a riot. Certain words in the definition need to be further defined.

“Arson” means when a person knowingly starts a fire or causes an explosion which unlawfully damages the property of another.

“Deadly weapon” means [insert statutory definition found in RSA 625:11,V].

“Purposely” means...[see definition of purposely].

“Recklessly” means...[see definition of recklessly].

RSA 644:1, I (b) Assembling for the Purpose of Engaging in a Riot

The defendant is charged with the crime of assembling for the purpose of engaging in a riot. This offense has [three]four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant assembled with two or more other persons; and
2. The defendant had the purpose of engaging soon thereafter in tumultuous or violent conduct; and
3. The defendant believed that two or more other persons in the assembly had the same purpose; and

For a class B felony, select one of the following:

- [4. [In the course of and as a result of the defendant's conduct, any person suffered physical injury, or substantial property damage or arson occurred] [the defendant was armed with a deadly weapon.

These are the elements of the crime of engaging in a riot. Certain words used in the elements also need to be defined or explained further:

“Arson” means when a person knowingly starts a fire or causes an explosion which unlawfully damages the property of another.

“Deadly weapon” means [insert statutory definition found in RSA 625:11,V].

“Purposely” means...[see definition of purposely].

DRAFT

RSA 644:1, I (c) Riot

[Assembling for purpose of committing an offense against a supposed violator of the law]

The defendant is charged with the crime of riot by assembling with two or more other persons for the purpose of committing an offense against a supposed violator of the law. This offense has [four][five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant assembled with two or more other persons; and
2. The defendant had the purpose of committing an offense against the person or property of another whom the defendant supposed to be guilty of a violation of the law; and
3. The defendant believed that two or more of the other persons in the assembly had the same purpose; and
4. The defendant acted purposely.

For a class B felony, add the following:

5. [In the course of and as a result of the defendant's conduct, any person suffered physical injury, or substantial property damage or arson occurred.][The defendant was armed with a deadly weapon.]

These are the elements of the crime of riot. Certain words need to be further defined.

“Arson” means when a person knowingly starts a fire or causes an explosion which unlawfully damages the property of another.

“Deadly weapon” means [insert statutory definition found in RSA 625:11,V].

“Purposely” means...[see definition of purposely].

DRAFT
RSA 644:1, III Riot
[Refusal to render assistance to law enforcement]

The defendant is charged with the crime of refusal to render assistance to law enforcement during a riot. This offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was present during a riot; and
2. The defendant was requested by a police officer to render assistance, other than the use of force, in suppressing the riot; and
3. The defendant refused to give such assistance; and
4. The defendant acted knowingly.

These are the elements of the crime of refusing to render assistance to law enforcement during a riot. Certain words need to be further defined.

The law defines a riot as an assembly of three or more persons engaged in tumultuous or violent conduct, thereby purposely or recklessly creating a substantial risk of causing public alarm. A riot is also an assembly of three or more persons for the purpose of engaging soon thereafter in tumultuous or violent conduct. A riot is also an assembly three or more persons with the purpose of committing an offense against the person or property of another who is supposed to be guilty of a violation of the law.

“Knowingly” means....[see definition of knowingly].

RSA 644:2, I Disorderly Conduct [Creating hazardous condition]

The defendant is charged with the crime of disorderly conduct. This offense has five parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant created a condition that was hazardous to [himself][herself] or another person;
2. The defendant created the condition in a public place; and
3. The defendant created the condition by an action that served no legitimate purpose; and
4. The defendant continued the conduct after a request by any person to desist;¹ and
5. The defendant acted [knowingly][purposely.]

These are the elements of the crime of disorderly conduct. Certain words need to be further defined.

“Public place” means [insert statutory definition of RSA 644:2,IV(b)].

“Knowingly” means...[see definition of knowingly].

“Purposely” means...[see definition of purposely].

¹ If this element is not proved, the defendant may still be convicted on a violation as a lesser included offense. RSA 644:2, V.

RSA 644:2, II (a) Disorderly Conduct
[Fighting or violent, tumultuous or threatening behavior]

The defendant is charged with the crime of disorderly conduct. The definition of the offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant engaged in fighting or in violent, tumultuous or threatening behavior;
and
2. The defendant engaged in this conduct in a public place ; and
3. The defendant continued the conduct after a request by any person to desist; and

These are the elements of the crime of disorderly conduct. Certain words need to be further defined.

“Public place” means [insert statutory definition at RSA 644:2, IV(b)].

RSA 644:2, II (b) Disorderly Conduct (Obscene, derisive or offensive words)

The defendant is charged with the crime of disorderly conduct. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant directed obscene derisive, or offensive words at another person; and
2. The words were likely to provoke a violent reaction on the part of an ordinary person; and
3. The defendant engaged in this conduct in a public place; and
4. The defendant continued the conduct after a request by any person to desist.

These are the elements of the crime of disorderly conduct. Certain words need to be further defined.

“Public place” means [insert statutory definition at RSA 644:2, IV(b)].

RSA 644:2, II (c) Disorderly Conduct (Obstructing traffic)

The defendant is charged with the crime of disorderly conduct. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant obstructed vehicular or pedestrian traffic on a public street or sidewalk or the entrance to a public building; and
2. The defendant continued the conduct after a request by any person to desist.

RSA 644:2, II (d) Disorderly Conduct [Interfering with a criminal investigation, fire fighting or emergency services]

DRAFT

The defendant is charged with the crime of disorderly conduct. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant engaged in conduct which substantially interfered with [a criminal investigation] [a firefighting operation] [the provision of emergency medical treatment] [the provision of emergency services when traffic or pedestrian management is required]; and
2. The defendant engaged in this conduct in a public place; and
3. The defendant continued the conduct after a request by any person to desist.

These are the elements of the crime of disorderly conduct. Certain words need to be further defined.

“Public place” means [insert statutory definition at RSA 644:2, IV(b)].

RSA 644:2, II (e) Disorderly Conduct (Refusal to comply with a lawful order)

The defendant is charged with the crime of disorderly conduct. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant refused to comply with an order of a peace officer to move from any public place; and
2. The order of the peace officer was lawful; and
3. The defendant acted knowingly.

These are the elements of the crime of disorderly conduct. Certain words need to be further defined.

“Public place” means [insert statutory definition at RSA 644:2, IV(b)].

“Lawful order” means [insert statutory definition at RSA 644:2, IV(a)].

“Knowingly” means....[see definition of knowingly].

RSA 644:3 False Public Alarms

The defendant is charged with the crime of false public alarms. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant directly or indirectly communicated a report regarding a fire, explosion, catastrophe, or emergency; and
2. The report was communicated to a governmental agency that commonly deals with emergencies involving danger to life or property; and
3. The report was known by the defendant to be false; and
4. The defendant acted knowingly.

These are the elements of the crime of false public alarm. Certain words need to be further defined.

“Knowingly” means..[see .definition of knowingly.]

RSA 644:3-a False Fire Alarms

The defendant is charged with the crime of false fire alarm. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [gave] [aided or abetted in the giving of] a false alarm of fire by any means; and
2. The defendant acted knowingly.

These are the elements of the crime of false fire alarm. Certain words used in the elements also need to be defined or explained further:

“Knowingly” means....[see definition of knowingly].

RSA 644:3-b False Fire Alarms Resulting in Injury or Death

The defendant is charged with the crime of false fire alarm resulting in injury or death. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [gave] [aided or abetted in the giving of] a false alarm of fire; and
2. The defendant acted knowingly; and
3. Bodily injury or death was sustained by any person as a result of the false alarm.

These are the three elements of the offense of false fire alarm resulting in injury or death. Certain words need to be further defined.

“Knowingly” means....[see definition of knowingly.]

RSA 644:3-c Unlawful Interference with Fire Alarm Apparatus

The defendant is charged with the crime of unlawful interference with fire alarm apparatus. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [tampered with] [interfered with] [impaired] any public fire alarm [apparatus] [wire] [associated equipment]; and
2. The defendant acted knowingly.

These are the elements of the crime of unlawful interference with fire alarm apparatus. Certain words need to be further defined.

“Knowingly” means....[see definition of knowingly].

RSA 644:4, I (a) Harassment (Telephone Calls)

The defendant is charged with the crime of harassment. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant made a telephone call, whether or not a conversation ensued; and
2. The defendant acted with the purpose to annoy or alarm another person.

These are the elements of the crime of harassment. Certain words need to be further defined.

“Purposely” means....[see definition of purposely].

DRAFT
RSA 644:4, I (b): Harassment
(Repeated communications at inconvenient hours or using obscene language)

The defendant is charged with the crime of harassment. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant made repeated communications [at extremely inconvenient hours] [in offensively course language]; and
2. The defendant acted with the purpose to annoy or alarm another person.

These are the elements of the crime of harassment. Certain words need to be further defined.

“Communication” means the imparting of [insert statutory definition at RSA 644:4, II.

“Purposely” means....[see definition of purposely].

RSA 644:4, I (c): Harassment (Insulting, taunting, or challenging)

The defendant is charged with the crime of harassment. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [insulted] [taunted] [challenged] another person; and
2. The defendant acted in a manner likely to provoke a violent or disorderly response.

RSA 644:4, I (d): Harassment
(Communicating any matter tending to incite murder, assault, or arson)

The defendant is charged with the crime of harassment. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant made a communication which was likely to incite [murder] [assault] [arson]; and
2. The defendant acted knowingly.

These are the elements of the crime of harassment. Certain words need to be further defined.

“Communicate” means ... [insert statutory definition at RSA 644:4, II].

“Knowingly” means....[see definition of knowingly].

RSA 644:4, I (e): Harassment (Communicating a threat)

The defendant is charged with the crime of harassment. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant communicated a threat [to kidnap any person] [to interfere with the lawful custody of a child in violation of RSA 633:4] [to the life or safety of another person]; and
2. The defendant acted with the purpose to annoy or alarm another person.

These are the elements of the crime of harassment. Certain words need to be further defined.

“Communicate” means ... [insert statutory definition of RSA 644:4, II].

A person is in violation of RSA 633:4 when he/she takes, entices away, detains, or conceals any child under the age of 18, or causes any the child to be taken, enticed away, detained or concealed, with the intent to detain or conceal the child from a parent, guardian, or other person having lawful charge of the child.

“Purposely” means....[see definition of purposely].

RSA 644:4, I (f): Harassment (Communicating after notification)

The defendant is charged with the crime of harassment. The definition of this offense has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant communicated with another person; and
2. The defendant had previously been notified that the recipient did not desire further communication; and
3. The communication was not for a lawful purpose or constitutionally protected; and
4. The defendant acted with the purpose to annoy or alarm another person.

These are the elements of the crime of harassment. Certain words need to be further defined.

“Communicate” means ... [insert statutory definition at RSA 644:4, II].

“Purposely” means....[see definition of purposely].

DRAFT

RSA 644:7 Abuse of Corpse

The defendant is charged with the crime of abuse of a corpse. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [removed] [concealed] [destroyed] [a corpse] [any part of a corpse];
and
2. The defendant acted unlawfully; and
3. The defendant acted knowingly.

These are the elements of the crime of abuse of a corpse. Certain words need to be further defined.

“Knowingly” means....[see definition of knowingly].

RSA 644:8-a, I Exhibitions of Fighting Animals (Keeping or training)

The defendant is charged with the crime of exhibitions of fighting animals. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [kept] [trained] any [dog] [bird] [other animal]; and
2. The defendant had the intent that the [dog] [bird] [other animal]; would be used in an exhibition of fighting; and
3. The defendant acted purposely.

These are the elements of the crime of exhibitions of fighting animals. Certain words need to be further defined.

“Purposely” means....[see definition of purposely].

RSA 644:8-a, I Exhibitions of Fighting Animals
(Establishing or promoting an exhibition of fighting)

The defendant is charged with the crime of exhibitions of fighting animals. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [established] [promoted] an exhibition of the fighting of any [dog] [bird] [other animal]; and
2. The defendant acted purposely.

These are the elements of the crime of exhibitions of fighting animals. Certain words need to be further defined.

“Purposely” means....[see definition of purposely].

RSA 644:8-a, II Exhibitions of Fighting Animals (Presence during preparations)

The defendant is charged with the crime of exhibitions of fighting animals. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was present at any place or building when preparations were being made for an exhibition of fighting [dogs] [birds] [other animals]; and
2. The defendant had the intent to be present at such exhibition; and
3. The defendant acted purposely.

These are the elements of the crime of exhibitions of fighting animals. Certain words need to be further defined.

“Purposely” means....[see definition of purposely].

RSA 644:8-2, II Exhibitions of Fighting Animals
(Presence at, aiding in or contributing to the exhibition)

The defendant is charged with the crime of exhibitions of fighting animals. The definition of this offense has one part or element. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [was present at] [aided in] [contributed to] an exhibition of fighting [dogs] [birds] or other animals].

RSA 644:8-an Animals in Motor Vehicle

The defendant is charged with the crime of animals in motor vehicle. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant confined an animal in a [motor vehicle] [other enclosed space]; and
2. The temperature in the [motor vehicle] [other enclosed space] was [so high] [so low] as to cause serious harm to the animal.

These are the elements of the crime of animals in motor vehicle. Certain words need to be further defined.

“Animal” means a domestic animal, household pet, or wild animal held in captivity.

RSA 644:8 III (a) Cruelty to Animals - Deprive of Care or Shelter

The defendant is charged with the offense of cruelty to animals. The definition of this crime has three (3) parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant deprived (or caused to be deprived) an animal in his/her possession (or custody) necessary care (sustenance) (or shelter);
2. The defendant acted without lawful authority; and
3. The defendant acted negligently

There are the elements of the crime of cruelty to animals. Certain words in the definition need to be further defined.

“Cruelty” means – see 644:8 I

“Animal” means – see 644:8 II

“Shelter” means – see 644:8 II -(a)

“Negligently” means (see definition of negligently, also 626:2, II (d))

RSA 644:8 III (b) Cruelty to Animals – Beat, Whip, Torture or Mutilate

The defendant is charged with the offense of cruelty to animals. The definition of this crime has two (2) parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

DRAFT

1. The defendant (beat) (cruelly whipped) (tortured) (mutilated) (or in any other manner mistreated) (or caused to be mistreated) any animal.
2. The defendant acted negligently.

These are the elements of the crime of cruelty to animals. Certain words in the definition need to be further defined.

“Cruelty” means – see 644:8 I

“Animal” means – see 644:8 II

“Negligently” means (see definition of negligently, also 626:2, II (d))

RSA 644:8 III (c) Cruelty to Animals – Overwork

The defendant is charged with the offense of cruelty to animals. The definition of this crime has two (2) parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant (overdrove), (overworked), (drove when overloaded), (or otherwise abused or misused) an animal intended for (or used for) labor.
2. The defendant acted negligently.

These are the elements of the crime of cruelty to animals. Certain words in definition need to be further defined.

“Cruelty” means – see 644:8, I

“Animal” means – see 644:8, II

“Negligently” means – (see definition of negligently, also 626:2, II (d))

RSA 644:8 III (d) Cruelty to Animals – Improper Transport

DRAFT

The defendant is charged with the offense of cruelty to animals. The definition of this crime has three (3) parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant transported an animal in his/her possession (custody); and
2. The defendant did so in a manner that was injurious to health, safety or physical well-being of the animal; and
3. The defendant acted negligently

These are the elements of the crime of cruelty to animals. Certain words in the definition need to be further defined.

“Cruelty” means – see 644:8, I

“Animal” means – 644:8, II

“Negligently” means (see definition of negligently, also 626:2, II (d))

DRAFT
RSA 644:8 III (e) Cruelty to Animals – Abandon

The defendant is charged with the offense of cruelty to animals. The definition of this crime has three (3) parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant abandoned an animal in his/her possession or custody; and
2. The defendant did so by causing the animal to be left without supervision or adequate provision for its care sustenance or shelter; and
3. The defendant acted negligently.

These are the elements of the crime of cruelty to animals. Certain words in the definition need to be further defined.

“Cruelty” means – see 644:8, I

“Animal” means – see 644:8, II

“Negligently” means (see definition of negligently, also 626:2, II (d))

RSA 644:8 III (f) Cruelty to Animals – Catchall

DRAFT

The defendant is charged with the offense of cruelty to animals. The definition of this crime has two (2) parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant permitted or caused an animal in his/her possession or custody to be subjected to (cruelty), (inhumane treatment) (unnecessary suffering of any kind); and
2. The defendant acted negligently.

These are the elements of the crime of cruelty to animals. Certain words in the definition need to be further defined.

“Cruelty” means – see 644:8, I

“Animal” means – see 644:8, II

“Negligently” means (see definition of negligently, also 626:2, II (d))

RSA 644:8 III-a Cruelty to Animals – Beat, Whip, Torture or Mutilate – Purposely

The defendant is charged with the offense of cruelty to animals. The definition of this crime has two (2) parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant [beat] [cruelly whipped] [tortured] [mutilated] any animal; and
2. The defendant acted purposely.

These are the elements of the crime of cruelty to animals. Certain words in the definition need to be further defined.

“Cruelty” means – see 644:8, I

“Animal” means – see 644:8, II

“Negligently” means see definition of negligently, also 626:2, II (d)

“Purposely” means - see definition of purposely.

RSA 644:17 I Willful concealment

The defendant is charged with the crime of willful concealment. The definition of this crime has four parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant concealed [goods] [merchandise] of any store; and
2. The defendant had no authority to do so; and
3. The defendant was upon the premises of the store; and
4. The defendant acted willfully.¹

These are the elements of the crime of willful concealment. Certain words need to be further defined.

“Willfully” means [see definition of knowingly.]

¹ RSA 626:2, IV

RSA 644:17 II Shoplifting

The defendant is charged with the crime of shoplifting. The definition of this crime has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [removed goods or merchandise from the premises of a merchant] [altered, transferred or removed any price marking affixed to goods or merchandise] [caused the cash register or other sales recording device to reflect less than the merchant stated or advertised price for goods or merchandise] [transferred goods or merchandise from the container in which such goods or merchandise were intended to be sold to another container]; and
2. The defendant acted with a purpose to deprive the merchant of the goods or merchandise.

These are the elements of the crime of shoplifting. Certain words in the definition need to be further defined.

“Merchant” means [inset statutory definition of RSA 644:17 III (a)]

“Purpose to deprive” means [inset statutory definition of RSA 644:17 III (b)]

“Knowingly” means [see definition of knowingly]

PUBLIC INDECENCY

RSA 645:1 I (a) Indecent exposure and lewdness (Misdemeanor)

DRAFT

The defendant is charged with the crime of indecent exposure and lewdness. The definition of this offense has three parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant [fornicated] [exposed his/her genitals] [performed any act of gross lewdness]; and
2. The defendant acted under circumstances which he/she should have known would likely cause affront or alarm; and
3. The defendant acted knowingly.¹

These are the elements of the crime of indecent exposure and lewdness. Certain words in the definition need to be further defined.

“Knowingly” means [see definition of knowingly]

¹ State v Bergen 141 N.H. 61 (1996)

RSA 645:1 I (b) Indecent exposure and lewdness [Misdemeanor]

The defendant is charged with the crime of indecent exposure and lewdness. The definition of this offense has three parts of elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that

1. The defendant performed an act of [sexual penetration] [sexual contact] on [himself] [herself] [another]; and
2. The defendant performed such act in the presence of a child who at the time was at least 13 years of age and less than 16 years of age; and
3. The defendant acted purposely.

These are the element of the crime of indecent exposure and lewdness. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing or otherwise, of the victim’s or actor’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

“Sexual penetration” means

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the actor’s body or any object manipulated by the actor into genital or anal openings of the victim’s body; or
- Any intrusion, however, slight, of any part of the victim’s body into genial or anal openings of the actor’s body; or
- Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined above on the actor, on another person, or on [himself] [herself.]

Emission is not required as an element of any form of sexual penetration.

“Purposely” means [see definition of purposely.]

RSA 645:1 II (a) Indecent exposure and lewdness [Class B felony] [Child age 12 years old or under]

DRAFT

The defendant is charged with the crime of indecent exposure and lewdness. The definition of this offense has three parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant performed an act of [sexual penetration] [sexual contact] on [himself] [herself] [another]; and
2. The defendant performed such act in the presence of a child who at the time was 12 years of age or younger; and
3. The defendant acted purposely.

These are the elements of the crime of indecent exposure and lewdness. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing or otherwise, of the victim’s or actor’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

“Sexual penetration” means

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the actor’s body or any object manipulated by the actor into genital or anal openings of the victim’s body; or
- Any intrusion, however, slight, of any part of the victim’s body into genital or anal openings of the actor’s body; or
- Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined above on the actor, on another person, or on [himself] [herself.]

Emission is not required as an element of any form of sexual penetration.

“Purposely” means [see definition of purposely].

RSA 645:1 II (b) Indecent exposure and lewdness [Class B felony][Subsequent offense]

The defendant is charged with the crime of indecent exposure and lewdness, subsequent offense. The definition of this crime has four parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The performed an act of [sexual penetration] [sexual contact] on [himself] [herself] [another]; and
2. The defendant performed such act in the presence of a child who at the time was at least 13 years of age and less than 16 years of age; and
3. The defendant acted purposely; and
4. The defendant was previously convicted of [an offense under 645:1 (b)] [an offense which includes the same conduct, as is prohibited under 645:1 (b)].

These are the elements of the crime of indecent exposure and lewdness, subsequent offense. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing or otherwise, of the victim’s or actor’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

“Sexual penetration” means

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the actor’s body or any object manipulated by the actor into genital or anal openings of the victim’s body; or
- Any intrusion, however, slight, of any part of the victim’s body into genital or anal openings of the actor’s body; or
- Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined above on the actor, on another person, or on [himself] [herself.]

Emission is not required as an element of any form of sexual penetration.

“Purposely” means [see definition of purposely].

DRAFT

RSA 645:1 III (a) Indecent exposure and lewdness [Class A felony]

The defendant is charged with the crime of indecent exposure and lewdness, subsequent offense. The definition of this crime has four parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant performed an act of [sexual penetration] [sexual contact] on [himself] [herself] [another]; and
2. The defendant performed such act in the presence of a child who at the time was [at least 13 years of age and less than 16 years of age] [12 years of age or younger]; and
3. The defendant acted purposely; and
4. The defendant was previously convicted at least twice of offenses or a combination of offenses under 645 I (b) or 645 II (a) or offenses which include the same conduct as is prohibited in 645 I (b) or II (a) in another jurisdiction.

These are the elements of the crime of indecent exposure and lewdness, with multiple prior offenses. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing or otherwise, of the victim’s or actor’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

“Sexual penetration” means

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the actor’s body or any object manipulated by the actor into genital or anal openings of the victim’s body; or
- Any intrusion, however, slight, of any part of the victim’s body into genital or anal openings of the actor’s body; or
- Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined above on the actor, on another person, or on [himself] [herself.]

Emission is not required as an element of any form of sexual penetration.

“Purposely” means [see definition of purposely].

DRAFT

RSA 645:2, I (a) Solicitation

The defendant is charged with the crime of prostitution. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant [solicited], [agreed to perform] or [engage in] [sexual contact] or [penetration]; and
2. The defendant's act occurred in return for consideration; and .
3. The defendant acted knowingly.

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the victim's or the defendant's sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant's body or any object manipulated by the defendant into genital or anal openings of the other person's or the defendant's body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Knowingly” means [see definition of knowingly]

¹ RSA 632-A:1 IV

² RSA 632-A:1 V

RSA 645:2, I (b) Prostitution [Induce another]

The defendant is charged with the crime of prostitution. The definition of this offense has [two] [three] [four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant induced or caused another to [agree to perform], [engage in], [solicit], [sexual contact] or [sexual penetration] in return for consideration; and

2. The defendant acted purposely.

[3. One of the other people involved was under the age of 18.]

[4. One of the other people involved was compelled by force or intimidation.”

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the other person or the defendant’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant’s body or any object manipulated by the defendant into genital or anal openings of the other person’s or the defendant’s body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Purposely” means [see definition of purposely].

¹ RSA 632-A:1 IV

² RSA 632-A:1 V

RSA 645:2, I (c) Prostitution [Transport]

The defendant is charged with the crime of prostitution. The definition of this offense has [three] [four] [five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant transported another into or within this state; and
2. The defendant acted with the purpose of [soliciting] [agreeing to perform] [engaging in] [sexual contact] [sexual penetration] in return for consideration; and
3. The defendant acted purposely.
- [4. One of the other people involved was under the age of 18.]
- [5. One of the other people involved was compelled by force or intimidation.]

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the other person or the defendant’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant’s body or any object manipulated by the defendant into genital or anal openings of the other person’s or the defendant’s body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Purposely” means [see definition of purposely].

¹ RSA 632-A:1 IV

² RSA 632-A:1 V

RSA 645:2, I (d) Prostitution [Supported by]

The defendant is charged with the crime of prostitution. The definition of this offense has [three] [four] [five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was supported in whole or in part by the proceeds of [solicitation] [agreeing to perform], [engaging in] [sexual contact] or [sexual penetration] in return for consideration; and
 2. The defendant was not a legal dependent of the person engaged in such conduct and was incapable of self-support; and
 3. The defendant acted knowingly.
- [4. One of the other people involved was under the age of 18.]
- [5. One of the other people involved was compelled by force or intimidation.]

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the other person or the defendant’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant’s body or any object manipulated by the defendant into genital or anal openings of the other person’s or the defendant’s body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Knowingly” means [see definition of knowingly].

¹ RSA 632-A:1 IV

² RSA 632-A:1 V

RSA 645:2, I (e) Prostitution [Furnish place]

The defendant is charged with the crime of prostitution. The definition of this offense has [two] [three] [four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant permitted a place under [his] [her] control to be used for [soliciting] [agreeing to] [engaging in], [sexual contact] [sexual penetration] in return for consideration; and
2. The defendant acted knowingly.
- [3. One of the other people involved was under the age of 18.]
- [4. One of the other people involved was compelled by force or intimidation.]

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the other person or the defendant’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant’s body or any object manipulated by the defendant into genital or anal openings of the other person’s or the defendant’s body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Knowingly” means [see definition of knowingly].

¹ RSA 632-A:1 IV

² RSA 632-A:1 V

RSA 645:2, I (f) Prostitution [Pay/offer]

The defendant is charged with the crime of prostitution. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [paid] [agreed to pay] [offered to pay] another person to engage in [sexual contact] [sexual penetration] with the defendant or with another person; and
2. The defendant acted purposely.

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the other person or the defendant’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant’s body or any object manipulated by the defendant into genital or anal openings of the other person’s or the defendant’s body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Purposely” means [see definition of purposely.]

¹ RSA 632-A:1 IV

² RSA 632-A:1 V

COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION PREVENTION

RSA 649-B:3 Computer Pornography

The defendant is charged with the crime of computer pornography. This offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant knowingly [compiled, entered into, or transmitted by means of a computer][made, printed, published, or reproduced by other computerized means][caused or allowed to be entered into or transmitted by means of computer][bought, sold, received, exchanged, or disseminated by means of computer]

2. [Any notice, statement or advertisement], or [any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information];

The defendant did so with the purpose of facilitating, encouraging offering, or soliciting, sexual conduct of or with any child or the visual depiction of such conduct.

These are the elements of the crime of child pornography. Certain words need to be further defined:

“Child” means any person under the age of 16 years.

“Purposely” means [see definition of purposely.]

“Knowingly” means [see definition of knowingly.]

OBSCENE MATTER

~~RSA 650:2-1 (a) Obscenity [Sale]~~

The defendant is charged with the offense of obscenity. The definition of this crime has three parts or elements. The state must prove each element beyond a reasonable doubt. Thus the state must prove that:

1. The defendant with knowledge of the nature of the content; and
2. [Sold] [delivered or provided] [offered or agreed to sell] any obscene material; and
3. The defendant acted knowingly.

These are the elements of the crime of obscenity. Certain words in the definition need to be further defined.

“Material” means any printed matter, visual representation, live performance or sound recording including, but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statutes, plays, dances or other representation or embodiment of the obscene. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene material notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

Material is “obscene” if, considered as a whole, to the average person

(a) When applying the contemporary standards of the county within which the obscenity offense was committed, its predominate appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts;

(b) It depicts or describes sexual conduct in a manner so explicit as to be patently offensive;

(c) It lacks serious literary, artistic, political or scientific value.

“Knowledge” means general awareness of the nature of the content of the material.

“Knowingly” means [see definition of knowingly].

RSA 650:2, I (b) Obscenity [Present or direct performance]

The defendant is charged with the offense of obscenity. The definition of this crime has three parts or elements. The state must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant with knowledge of the nature of the content thereof;
2. [Presented or directed an obscene play, dance or performance] [participated in that portion thereof which made it obscene]; and
3. The defendant acted knowingly.

These are the elements of the crime of obscenity. Certain words in the definition need to be further defined.

“Obscene” means if, considered as a whole, to the average person

(a) When applying the contemporary standards of the county within which the obscenity offense was committed, its predominate appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts;

(b) It depicts or describes sexual conduct in a manner so explicit as to be patently offensive;

(c) It lacks serious literary, artistic, political or scientific value.

“Knowledge” means general awareness of the nature of the content of the material.

“Knowingly” means [see definition of knowingly].

RSA 650:2, I (c) Obscenity [Publish]

The defendant is charged with the offense of obscenity. The definition of this crime has three parts or elements. The state must prove each element beyond a reasonable doubt. Thus the State must prove that:

DRAFT

1. The defendant with knowledge of the nature of the content thereof; and
2. [Published] [exhibited][otherwise made] obscene material available; and
3. The defendant acted knowingly.

These are the elements of the crime of obscenity. Certain words in the definition need to be further defined.

“Material” means any printed matter, visual representation, live performance or sound recording including, but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statutes, plays, dances or other representation or embodiment of the obscene. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene material notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

“Obscene” means if, considered as a whole, to the average person

(a) When applying the contemporary standards of the county within which the obscenity offense was committed, its predominate appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts;

(b) It depicts or describes sexual conduct in a manner so explicit as to be patently offensive;

(c) It lacks serious literary, artistic, political or scientific value.

“Knowledge” means general awareness of the nature of the content of the material.

“Knowingly” means [see definition of knowingly].

RSA 650:2, I (d) Obscenity [Possess with intent to sell]

The defendant is charged with the offense of obscenity. The definition of this crime has three parts or elements. The state must prove each element beyond a reasonable doubt. Thus the State must prove that:

DRAFT

1. The defendant with knowledge of the nature of the content thereof; and
2. Possessed obscene material for purposes of sale or other commercial; and
3. The defendant acted purposely.

These are the elements of the crime of obscenity. Certain words in the definition need to be further defined.

“Material” means any printed matter, visual representation, live performance or sound recording including, but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statutes, plays, dances or other representation or embodiment of the obscene. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene material notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

“Obscene” means if, considered as a whole, to the average person

(a) When applying the contemporary standards of the county within which the obscenity offense was committed, its predominate appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts;

(b) It depicts or describes sexual conduct in a manner so explicit as to be patently offensive;

(c) It lacks serious literary, artistic, political or scientific value.

“Disseminate” means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit or display.

“Knowledge” means general awareness of the nature of the content of the material.

“Purposely” means [see definition of purposely.]

RSA 650:2, 1 (e) Obscenity [Commercial dissemination]

The defendant is charged with the offense of obscenity. The definition of this crime has three parts or elements. The state must prove each element beyond a reasonable doubt. Thus the State must prove that:

1. The defendant with knowledge of the nature of the content thereof; and
2. [Sold] [advertised] [otherwise commercially disseminated] material, whether or not obscene, by representing or suggesting that it was obscene; and
3. The defendant acted knowingly.

These are the elements of the crime of obscenity. Certain words in the definition need to be further defined.

“Material” means any printed matter, visual representation, live performance or sound recording including, but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statutes, plays, dances or other representation or embodiment of the obscene. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene material notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

“Obscene” means if, considered as a whole, to the average person

(a) When applying the contemporary standards of the county within which the obscenity offense was committed, its predominate appeal is to the prurient interest in sex, that is, an interest in lewdness or lascivious thoughts;

(b) It depicts or describes sexual conduct in a manner so explicit as to be patently offensive;

(c) It lacks serious literary, artistic, political or scientific value.

“Disseminate” means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit or display.

“Knowledge” means general awareness of the nature of the content of the material.

“Knowingly means [see definition of knowingly.]

SEXUAL OFFENDER REGISTRATION

DRAFT

RSA 651-B:9 Failure to Comply with Requirements of Sexual Offender Registration

The defendant is charged with the crime of failure to comply with requirements of sexual offender registration. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was a convicted sex offender; and
2. The defendant failed to [specify the applicable statutory variant under RSA 651-B:4 or 5]; and
3. The defendant acted knowingly.

These are the elements of the crime of failure to comply with requirements of sexual offender registration. Certain words in the definition need to be further defined.

“Knowingly” means [see definition of knowingly].

III. DEFENSES

INTOXICATION

DRAFT
RSA 626:4 Intoxication

Evidence has been introduced that the defendant was under the influence of an intoxicating substance at the time of the crime. Intoxication is not itself a defense. However, if you find that the defendant was intoxicated you may consider whether this affected his/her ability to form the requisite mental state, Thus, that he/she acted [purposely][knowingly].

EFFECT OF IGNORANCE OR MISTAKE

RSA 626:3 I Effect of Ignorance or Mistake

DRAFT

Mistake of Fact

Evidence has been introduced that the defendant acted under a mistaken belief of fact. This is an affirmative defense that the defendant has the burden of proving by a preponderance of the evidence.¹

If you find that the defendant has proved beyond a reasonable doubt that he/she acted under a mistaken belief of fact, then you should consider whether this mistake negates the culpable mental state required for the commission of this offense. Thus if you find that the defendant's mistaken belief of fact prevented the state from proving beyond a reasonable doubt that he/she acted [purposely][knowingly][recklessly] Thus, you must find the defendant not guilty.

Thus,, the statute defines this offense expressly provides that a mistake of fact as to _____, is a defense. Thus if you find that the defendant has proved by a preponderance of the evidence that he/she acted under a mistake of fact as to _____, then you should go on to consider whether the state has disproved this defense beyond a reasonable doubt.²

Thus,, you have heard evidence of the defense of insert applicable justification . If you find by a preponderance of the evidence that the defendant acted under a mistaken belief of fact that would support his/her defense of insert applicable justification, then you should go on to consider whether the state has disproved this defense beyond a reasonable doubt.

Certain words in this definition need to be defined:

“Preponderance of the evidence” is a standard of proof that is less than proof beyond a reasonable doubt.

Thus,, you must determine whether the defendant has established his/her mistake of fact by a preponderance of the evidence. That means that it is more likely than not that he/she did act under a mistake of fact Thus,,

¹ *State v. Low*, 138 N.H. 86 (1993) Court characterizes this defense as an affirmative defense.

² The committee has been unable to find such a statute.

RSA 626:3 II Effect of Ignorance or Mistake

Mistake of Law

Evidence has been introduced that the defendant acted under a mistaken belief of law. A person is not relieved of criminal liability because he/she acts under a mistaken belief that his conduct does not, as a matter of law, constitute an offense, unless his/her belief is founded upon:

1. A statement of the law contained in;
- 2 a statute or other enactment or an administrative order or grant of permission or a judicial decision of a state or federal court or a written interpretation of the law relating to the offense officially made by a public servant agency or body legally empowered with authority to administer, enforce or interpret such law.

The defendant bears the burden of proving his/her mistaken belief of law by a preponderance of the evidence.

Certain words need to be defined further:

Preponderance of the evidence is a standard of proof that is less than beyond a reasonable doubt. Thus,, you must determine whether the defendant has established his/her mistake of law defense by a preponderance of the evidence. That means that it is more likely than not that he/she acted under a mistaken belief that his/her conduct did not as a matter of law constitute an offense.

INSANITY

DRAFT

RSA 628:2 Insanity (Guilt Phase Waived)

Thus,, the defendant is charged with (the crime charged.) The defendant does not contest the factual allegations of the indictment and you may, therefore, take it as proven that he committed the acts alleged in the indictments. Rather, the defendant has entered a plea of not guilty by reason of insanity to this charge. Under the laws of the State of New Hampshire, a person who is insane at the time he acts is not criminally responsible for his conduct although he may be confined pursuant to another set of laws as I will explain to you later. When a defendant pleads not guilty by reason of insanity, he has the burden of proving by clear and convincing evidence that he was, in fact, insane at the time of the acts alleged in the indictments.

I will define clear and convincing evidence in the context of the three burdens of proof we use in court cases. You may refer to the chart which reflects these three burdens of proof.

There are three different burdens or standards of proof. The party having the burden of proof has the obligation of persuading you that its position on the matter in issue is correct. The degree to which the moving party must persuade is what makes the three burdens or standards of proof different.

The highest or most difficult burden of proof is that beyond a reasonable doubt. This is employed in criminal cases where the State must prove, not beyond all doubt but beyond a reasonable doubt, that a defendant is guilty of each element of the offense charged.

The lowest burden of proof, that is, the one that is easiest to meet, is employed in civil cases where one individual sues another, usually for money damages. In those types of cases, the plaintiff has the burden of proving by a preponderance of the evidence that the defendant did the acts alleged and that those acts caused certain damages. Preponderance of the evidence means more likely than not or probably. Considering the scales of justice, if the scales tip ever so slightly in favor of the plaintiff, the plaintiff has met his burden of proof and he prevails. If the scales stay the same or tip in favor of the defendant, the plaintiff has not met his burden of proof and the defendant wins.

The standard of proof which is applicable Thus, is between beyond a reasonable doubt and preponderance of the evidence. It is called clear and convincing evidence. Clear and convincing evidence is an intermediate standard of proof which calls for more proof than that based on probabilities, but less proof than that based on reasonable doubt. In order to meet his burden of proof by clear and convincing evidence, the defendant must prove that it is highly probable that he was insane at the time of the alleged acts rather than merely more probable than not. The State does not have to convince you that the defendant was sane when he committed the illegal acts because the defendant is presumed to have been sane. Rather, the defendant must convince you that he was insane at the time of the killings, that is, that it is highly probable:

He was suffering from a mental disease or defect when he committed the alleged acts; and Those acts were the product of his mental disease or defect.

It is up to you, the jury, to determine as a questions of fact whether the defendant suffered from a mental disease or defect that caused him to act as charged. There is no legal definition of what constitutes a mental disease or defect. If at the time he committed (the crime charged) the defendant suffered from a mental disease or defect that caused him to commit that crime, he is not criminally responsible for those acts and the Court will then consider whether the defendant's mental disease or defect requires that he be confined to the Secure Psychiatric Unit at the state prison as I will explain shortly.

In deciding whether the defendant was insane, you may consider any evidence of insanity. You may consider, for example, the nature of the defendant's acts, whether at the time he acted the defendant was suffering from delusions or hallucinations, whether he knew the difference between right and wrong and whether he knew the nature of his acts. You may further consider whether the defendant acted impulsively or acted with cunning and planning in executing the crimes and in escaping or avoiding detection. You may also consider whether he had the power to choose between right and wrong and whether he could recognize acquaintances and transact business or manage his affairs.

None of these, however, is a test for insanity. You may consider all of these things, some of them or none of them or whatever else you believe pertinent to the issue of whether the defendant was sane or insane at the time he committed (the acts charged). All symptoms and all tests of mental disease or defect are purely matters of fact to be determined by the jury. Whether the defendant had a mental disease or defect are questions of fact for the jury.

Consider all the evidence in deciding the question of insanity including the testimony of lay witnesses, the testimony of expert witnesses, the exhibits and what you saw on the view. Remember that no particular type of evidence should be presumed superior to other types of evidence or are immune from your scrutiny. Thus, the testimony of psychiatric experts may be considered by you, but the testimony of lay witnesses may be considered as well. The ultimate question of insanity is for you to decide, not the psychiatric experts.

If you reject the defense of insanity and find the defendant sane, he will receive a sentence. However, you should not be concerned about what sentence he may receive. The duty of determining and imposing sentence is for the judge and not for the jury.

If you find the defendant not guilty by reason of insanity, I will conduct a hearing on his dangerousness within 40 days of your verdict. If I find that the defendant is not dangerous to go at large, he will be discharged or released. If I find that the defendant is dangerous to go at large, he will be committed to the Secure Psychiatric Unit at the New Hampshire State Prison. This commitment could be for as long as the rest of his life. If the defendant were so committed, he would be entitled to a hearing every five years at which the State would have to prove by clear and convincing evidence that the defendant is still dangerous. You are instructed that you are not to concern yourself with the issue of the defendant's dangerousness, for this issue is, as with the issue of sentencing, a matter only for the judge. The sole issues for you to determine are whether the defendant was suffering from a mental disease or defect when he committed (the acts charged), and if so, whether these acts were a product of his mental disease or defect.