

In the Supreme Court of the State of Idaho

IN RE: CRIMINAL JURY)

INSTRUCTIONS)

ORDER

The Idaho Supreme Court, having reviewed recommendations of the Idaho Criminal Jury Instructions Committee, and having reviewed revisions of the Idaho Criminal Jury Instructions based upon those recommendations,

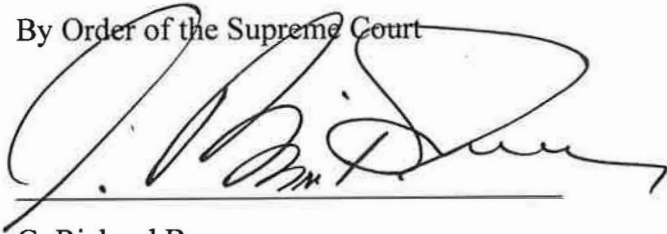
NOW, THEREFORE, IT IS ORDERED that the Court accepts revisions to Idaho Criminal Jury Instructions 939 (Prostitution – Definitions), 1208 (Assault with Intent to Commit a Serious Felony), 1210 (Battery with Intent to Commit a Serious Felony), 980 (Exposing Another to HIV Virus), 981 (Exposing Another to HIV Virus – Definitions), 984 (Sexual Contact with Prisoner), 984A (Sexual Contact with a Parolee or Probationer), 990 (Sexual Abuse of a Vulnerable Adult), 991 (Sexual Exploitation of a Vulnerable Adult), 1202 (Assault), 1203 (Battery Defined), 1204 (Battery), 1205 (Aggravated Assault), 1209 (Assault with Intent to Commit – When Intent Must Exist), and 924 (Sexual Exploitation of Child). The Court orders that 953 (Human Trafficking – Additional Finding), 961 (Assault with Intent to Commit Infamous Crime Against Nature), 971 (Battery with Intent to Commit Infamous Crime Against Nature), 960 (Assault with Intent to Commit Rape), 962 (Assault with Intent to Commit Lewd Conduct), 970 (Battery with Intent to Commit Rape), and 972 (Battery with Intent to Commit Lewd Conduct) be deleted. The revised Idaho Criminal Jury Instructions shall be disseminated for general use by the trial bench and bar in Idaho, to be effective immediately. It is recommended that whenever these revised Idaho Criminal Jury Instructions contain an instruction applicable to a case and the trial judge determines that the jury should be instructed on that subject, the judge should use the instruction contained in

the revised Idaho Criminal Jury Instructions, unless the judge finds that a different instruction would more adequately, accurately or clearly state the law.

IT IS FURTHER ORDERED that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly e-Bulletin, and that, as soon as practicable, a summary of the amendments effected by this Order shall be published in one issue of *The Advocate*.

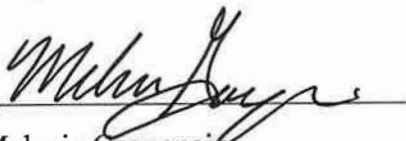
DATED this 24th day of August, 2026.

By Order of the Supreme Court



G. Richard Bevan
Chief Justice

ATTEST:


Melanie Gagnepain

I, Melanie Gagnepain, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
Certify that the above is a true and correct copy of the
Order entered in the above entitled
cause and now on record in my office. WITNESS my
hand and the Seal of this Court 8-24-2026
Melanie Gagnepain, Clerk

By  Deputy

**ICJI 939 ~~PROSTITUTION~~ PROVIDING COMMERCIAL SEXUAL ACTIVITY-
DEFINITIONS**

INSTRUCTION NO.

In these instructions, the following words have the meanings stated.

~~["Prostitution~~Providing commercial sexual activity" means: (a) engaging in, or offering or agreeing to engage in, ~~sexual conduct or sexual contact~~ with another person in return for a fee; or (b) ~~being an inmate of a house of prostitution; or (c) loitering in or within view of a public place for the purpose of being hired to engage in sexual conduct or sexual contact.~~

~~["Sexual conduct" means sexual intercourse or deviate sexual intercourse.]~~

~~["Sexual contact" means any touching of the sexual organs or other intimate body parts of another person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party, including but not limited to sexual intercourse, oral-genital contact, manual-genital contact, genital-anal contact, oral-anal contact, and other physical-genital contact.]~~

~~["House of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one (1) or more persons under the control, management, or supervision of another.]~~

"Benefits of such proceeds" includes but is not limited to any real or personal property obtained with or by use of proceeds as defined in this chapter; any debt, rent, or other financial obligation paid with proceeds as defined in this chapter; and any service obtained in exchange for proceeds as defined in this chapter.

"Child" means a person under eighteen (18) years of age.

"Commercial sexual activity" means the exchange, or the attempted exchange, of sexual contact for a fee.

"Fee" means any money, service, item of real or personal property, contraband, or thing of value.

"Intimate body parts" includes human genitals, pubic area, buttocks, or breasts.

"Proceeds" means any money, services, item of real or personal property, contraband, or thing of value paid or exchanged for sexual contact.

Comment

I.C. §§ 18-5613(1)& (3), 18-5601.

Only the definitions related to the charged offense should be included in the instruction.

ICJI 1208 ASSAULT WITH INTENT TO COMMIT A SERIOUS FELONY

INSTRUCTION NO.

In order for the defendant to be guilty of Assault With Intent to Commit [name of serious felony], the State must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed an assault upon [name or initials of victim]
4. by [description of conduct alleged in the charging document], and
5. the defendant did so with the intent to commit [murder,] [rape,] ~~[the infamous crime against nature,] [mayhem,] [robbery,] [or] [lewd and lascivious conduct with a minor child under sixteen.]~~

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18–909.

Assault is defined in ICJI 1201.

Murder is defined in ICJI 701.

Rape is defined in ICJI 901.

Mayhem is defined in ICJI 1222.

Robbery is defined in ICJI 501.

Lewd Conduct with a Minor Child Under Sixteen is defined in ICJI 929.

When the intent must exist is set forth in ICJI 1209.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

ICJI 1210 BATTERY WITH INTENT TO COMMIT A SERIOUS FELONY

INSTRUCTION NO.

In order for the defendant to be guilty of Battery With Intent to Commit [name of felony], the State must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant committed a battery upon [name or initials of victim],
4. by [description of conduct alleged in the charging document], and
5. the defendant did so with the intent to commit [murder] [rape] ~~[the infamous crime against nature]~~ [mayhem] [robbery] [or] ~~[lewd and lascivious conduct with a minor child under sixteen]~~.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18–911.

Battery is defined in ICJI 1203.

Murder is defined in ICJI 701.

Rape is defined in ICJI 901.

Mayhem is defined in ICJI 1222.

Robbery is defined in ICJI 501.

Lewd Conduct with a Minor Child Under Sixteen is defined in ICJI 929.

When the intent must exist is set forth in ICJI 1211.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include,

in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

**ICJI 980 – ~~EXPOSING ANOTHER TO~~TRANSFER OF BODY FLUID WHICH MAY
CONTAIN THE HIV VIRUS**

INSTRUCTION NO.

In order for the defendant to be guilty of ~~Exposing Another to~~Transferring Body Fluid Which May Contain the HIV Virus, the State must prove each of the following:

1. On or about [date]
2. in the state of Idaho
- [3. the defendant [name] exposed [name or initials of victim] to the human immunodeficiency virus (HIV)
4. intending to infect that person with such virus.]

[or]

[3. the defendant [name] was afflicted with acquired immunodeficiency syndrome (AIDS), AIDS related complexes, or other manifestations of human immunodeficiency virus (HIV) infection, and

4. knowing that the defendant was so afflicted,
5. the defendant transferred or attempted to transfer any of the defendant's body fluid, body tissue or organs to another person.]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 39–608.

**ICJI 981 ~~EXPOSING ANOTHER TO~~TRANSFER OF BODY FLUID WHICH MAY
CONTAIN THE HIV VIRUS – DEFINITIONS**

INSTRUCTION NO.

As used in these instructions:

"Body fluid" means [semen (whether or not spermatozoa is present)] [blood] [saliva] [vaginal secretion] [breast milk] [urine].

"Transfer" means [engaging in sexual activity by genital-genital contact, oral-genital contact, anal-genital contact] [or] [permitting the use of a hypodermic syringe, needle, or similar device without sterilization] [or] [giving (whether or not for value) blood, semen, body tissue, or organs to a person, blood bank, hospital, or other medical care facility for purposes of transfer to another person].

Comment

I.C. § 39-608(2).

ICJI 984 SEXUAL CONTACT WITH PRISONER

INSTRUCTION NO.

In order for the defendant to be guilty of Sexual Contact with a Prisoner, the Sstate must prove beyond a reasonable doubt:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. while [an employee of the Idaho Department of Correction,] [an employee of the Idaho Department of Juvenile Corrections,] an officer, employee, or agent of a [state, local or private correctional facility]
5. had sexual contact
6. with [name or initials] who was not the defendant's spouse, and
7. who was at that time an [[in-state] [or] [out-of-state] prisoner] [or] [juvenile offender].]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

As used in this instruction, "sexual contact" means sexual intercourse, or genital-genital contact, manual-anal contact, manual-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact between persons of the same or opposite sex.

———["Correctional facility" means a facility for the confinement of prisoners or juvenile offenders. The term shall be construed to include references to terms including, but not limited to, "prison," "state prison," "state penitentiary," "governmental detention facility," "penal institution (facility)," "correctional institution," "juvenile correctional center," "Idaho security medical program," "detention institution (facility)," "juvenile detention center (facility)," "county jail," "jail," "private prison (facility)," "private correctional facility," or those facilities that detain juvenile offenders pursuant to a contract with the Idaho department of juvenile corrections.]

["Local correctional facility" means a facility for the confinement of prisoners operated by or under the control of a county or city. The term shall include references to "county jail," or "jail." The term shall also include a private correctional facility housing prisoners under the custody of the state board of correction, the county sheriff or other local law enforcement agency.]

["Private correctional facility" or "private prison (facility)" means a correctional facility constructed or operated in the state of Idaho by a private prison contractor.]

["In-state prisoner" means any person who has been charged with or convicted of a crime in the state of Idaho or who is being detained pursuant to a court order, and who is being housed in any state, local or private correctional facility, or who is being transported in any manner within or through the state of Idaho.]

{ "Out-of-state prisoner" means any person who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and who is being housed in any state, local or private correctional facility in the state of Idaho, or who is being transported in any manner within or through the state of Idaho. }

{ "Juvenile offender" means a person younger than eighteen (18) years of age or who was younger than eighteen (18) years of age at the time of any act, omission, or status for which the person is being detained in a correctional facility pursuant to court order. }

Comment

I.C. §§ 18-101A: 18-6110.

ICJI 984A SEXUAL CONTACT WITH A PAROLEE OR PROBATIONER

INSTRUCTION NO.

In order for the defendant to be guilty of Sexual Contact with a Parolee or Probationer, the State must prove beyond a reasonable doubt:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. while a supervising officer
5. knowingly
6. had sexual contact
7. with [name or initials of victim], who was not the spouse of the defendant, and
8. who was at that time a [parolee] [or] [probationer].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

As used in this instruction:

"Sexual contact" means sexual intercourse, or genital-genital contact, manual-anal contact, manual-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, between persons of the same or opposite sex.

"Supervising officer" means an employee of the Idaho department of correction who is charged with or whose duties include supervision of felony parolees or felony probationers.

"Parolee" means a person who has been convicted of a felony and who has been placed on parole by the Idaho commission for pardons and parole or similar body of another state, the United States, or a foreign jurisdiction, and who is not incarcerated in any state, local or private correctional facility, and who is being supervised by employees of the Idaho department of correction.

"Probationer" means a person who has been placed on felony probation by an Idaho court, or a court of another state, the United States, or a foreign jurisdiction, and who is not incarcerated in any state, local or private correctional facility, and who is being supervised by employees of the Idaho department of correction.

Comment

I.C. §§ 18-101A; 18-6110.

ICJI 990 SEXUAL ABUSE OF A VULNERABLE ADULT

INSTRUCTION NO.

In order for the defendant to be guilty of Sexual Abuse of a Vulnerable Adult, the State must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. [the defendant [name] committed [an act of] [genital-genital contact] [or] [oral-genital contact] [or] [anal-genital contact] [or] [oral-anal contact] [or] [manual-anal contact] [or] [manual-genital contact] [or] [any other] [a] [lewd or lascivious act] upon or with the body of [name or initials of victim],]

[or]

[the defendant [name] involved [name or initials of victim] in an act of [bestiality] [or] [sado-masochism]]

[or]

[the defendant [name] caused or had sexual contact with [name or initials of victim]]

4. [name or initials of victim] was a vulnerable adult, and
5. the defendant [committed such act] [or] [involved [name or initials of victim] in such act of [bestiality] [or] [sado-masochistic abuse] [or] [caused or had sexual contact with [name or initials of victim] with the specific intent to arouse, appeal to, or gratify the lust or passions or sexual desires of the defendant, of [name or initials of victim], or of some other person.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

“Vulnerable adult” means a person 18 years of age or older who is unable to protect himself or herself from abuse, neglect or exploitation due to physical or mental impairment which affects the person’s judgment or behavior to the extent he or she lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his or her person, funds, property or resources.

{“Sexual contact” means any physical contact between a vulnerable adult and any person or between vulnerable adults, which is caused by the actor, or the actor causing the vulnerable adult to have self-contact.}

Comment

I.C. §§ 18-1505; 18-1505B.

ICJI 991 SEXUAL EXPLOITATION OF A VULNERABLE ADULT

INSTRUCTION NO.

In order for the defendant to be guilty of Sexual Exploitation of a Vulnerable Adult, the State must prove each of the following:

1. On or about [date]

2. in the state of Idaho

[3. [the defendant [name] knowingly caused, induced or permitted [name or initials of victim] to engage in or be used in any explicit sexual conduct]

[or]

[3. the defendant [name] knowingly [prepared.] [arranged for.] [published.] [produced.] [promoted.] [made.] [sold.] [financed.] [offered.] [exhibited.] [advertised.] [dealt in.] [possessed] [or] [distributed] sexually exploitative material depicting a vulnerable adult [engaged in.] [observing.] [or] [being used for] explicit sexual conduct]

4. for any commercial purpose, and

5. [name or initials of victim] was a vulnerable adult.}

{or}

~~—— [3. The defendant [name] [prepared.] [arranged for.] [published.] [produced.] [promoted.] [made.] [sold.] [financed.] [offered.] [exhibited.] [advertised.] [dealt in.] [possessed] [or] [distributed] sexually exploitative material depicting a vulnerable adult [engaged in.] [observing.] [or] [being used for] explicit sexual conduct]~~

~~4. for any commercial purpose.]~~

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

“Vulnerable adult” means a person 18 years of age or older who is unable to protect himself or herself from abuse, neglect or exploitation due to physical or mental impairment which affects the person’s judgment or behavior to the extent he or she lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his or her person, funds, property or resources.

“Commercial purpose” means the intention, objective, anticipation or expectation of monetary gain or other material consideration, compensation, remuneration or profit.

“Explicit sexual conduct” means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.

{“Sexually exploitative material” means any image, photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, digitally or chemically produced or reproduced visual material which depicts ~~shows~~ a vulnerable adult engaged in, participating in, observing, or being used for explicit sexual conduct, or showing a vulnerable adult engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling.}

Comment

I.C. § 18-1505B. The jury should be instructed on the appropriate definition of additional terms contained in I.C. § 18-1507.

ICJI 1202 ASSAULT

INSTRUCTION NO.

In order for the defendant to be guilty of Assault, the Sstate must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed an assault
4. upon [name or initials of victim]
- [5. by (description of conduct alleged in the charging document)].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18–901. Use with ICJI 1201 which provides a definition of assault.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

ICJI 1203 BATTERY DEFINED

INSTRUCTION NO.

A "battery" is committed when a person:

- (1) willfully and unlawfully uses force or violence upon the person of another; or
- (2) actually, intentionally and unlawfully touches or strikes another person against the will of the other; or
- (3) unlawfully and intentionally causes bodily harm to an individual.

Comment

I.C. § 18-903. This instruction should be used when the commission of a battery is an element of another crime, e.g., Battery with the intent to commit a serious felony defined, IC § 18-911 ICJI 1210. The definition should be tailored to fit the allegations in the charging document. *State v. Brazil*, 136 Idaho 327, 33 P.3d 218 (Ct. App. 2001); *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998).

ICJI 1204 – BATTERY

INSTRUCTION NO.

In order for the defendant to be guilty of Battery, the Sstate must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] committed a battery,
4. upon [name or initials of victim]
- [5. by (description of conduct alleged in the charging document)].

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18–903. Use with ICJI 1203 which provides a definition of battery.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

ICJI 1205 AGGRAVATED ASSAULT

INSTRUCTION NO.

In order for the defendant to be guilty of Aggravated Assault, the State must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] committed an assault upon [name or initials of victim]
4. by [description of conduct alleged in the charging document], and

5. the defendant committed that assault [with a deadly weapon or instrument but without intent to kill] [or] [by any means or force likely to produce great bodily harm.] [or] [with any vitriol, corrosive acid, or a caustic chemical of any kind.]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18–905. The definition of "deadly weapon" is set out in ICJI 1206. No definition of "great bodily harm" is necessary, see the comment to ICJI 1206 and ICJI 1207. The bracketed words "but without the intent to kill" should be used only when the jury is instructed on "Aggravated Assault" as an included offense of a higher offense that includes an intent to kill. Assault is defined in ICJI 1201.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.

ICJI 1209 ASSAULT WITH INTENT TO COMMIT – WHEN INTENT MUST EXIST

INSTRUCTION NO.

The crime of Assault With Intent to Commit [name of felony] is complete if an assault is made and at any moment during the assault the aggressor intends to commit [murder] [rape] ~~{the infamous crime against nature}~~ [mayhem] [robbery] [or] ~~[lewd and lascivious conduct with minor child under sixteen]~~.

ICJI 924 Sexual Exploitation of Child

INSTRUCTION NO.

In order for the defendant to be guilty of Sexual Exploitation of a Child, the state must prove each of the following:

1. On or about [date]

2. in the state of Idaho

[3. the defendant [name] knowingly and willfully possessed or accessed through any means, including but not limited to, the internet, any sexually exploitative material of a person, who was then under eighteen (18) years of age,

[or]

[3. the defendant [name] knowingly and willfully caused, induced or permitted a person, who was then under eighteen (18) years of age, to engage in, or be used for, any explicit sexual conduct for the purpose of producing or making sexually exploitative material; and

4. the defendant did so for a commercial purpose.]

[or]

[3. the defendant [name] knowingly and willfully prepared, arranged for, published, produced, promoted, made, sold, financed, offered, exhibited, or advertised, dealt in, possessed or distributed certain sexually exploitative material of a person, who was then under eighteen (18) years of age; and

4. the defendant did so for a commercial purpose.]

[or]

[4. the defendant [name] knowingly and willfully distributed through any means including, but not limited to mail, physical delivery or exchange, use of a computer or any other electronic or digital method, any sexually exploitative material of a person, who was then under eighteen (18) years of age. Distribution of sexually exploitative material does not require a pecuniary transaction or exchange of interests in order to complete the offense.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18-1507.

I.C. § 18-1507(4) states that the possession of three or more identical copies of sexually exploitative material creates a presumption that such possession was for a commercial purpose. Consistent with *State v. McCoy*, 100 Idaho 753, 605 P.2d 517 (1980); *State v. Peterman*, 100 Idaho 269, 596 P.2d 442 (1979); and *State v. Williams*, 103 Idaho 635, 651 P.2d 569 (Ct. App. 1982), no instruction on presumption should be given. *Mullaney v. Wilbur*, 421 U.S. 684 (1975).