

In the Supreme Court of the State of Idaho

IN RE: CRIMINAL JURY

INSTRUCTIONS

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ORDER

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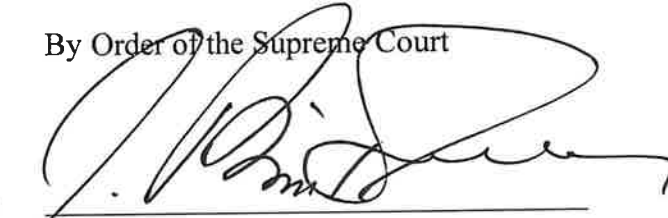
The Idaho Supreme Court, having reviewed recommendations of the Idaho Criminal Jury Instructions Committee, and having reviewed revisions of the Idaho Criminal Jury Instructions based upon those recommendations,

NOW, THEREFORE, IT IS ORDERED that the Court approves the adoption of a new Idaho Criminal Jury Instruction designated as follows, copies of which are attached hereto: Defense - Providing Commercial Sexual Activity, to be designated as ICJI 953. The Court also accepts revisions to Idaho Criminal Jury Instructions 982 (Defense: Transfer of Body Fluid Which May Contain HIV Virus - (Medical Advice)), 983 (Defense: Transfer of Body Fluid Which May Contain The HIV Virus - (Consent)), 1201 (Assault Defined), 1206 (Deadly Weapon Defined), 1602 (Use of a Firearm or Deadly Weapon), 1207 (Aggravated Battery), 343 (Malice Defined), and 941 (Soliciting Commercial Sexual Activity - Enhancement). The new and 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 7th day of September, 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 9-9-26
Melanie Gagnepain, Clerk

By  Deputy

****NEW INSTRUCTION****

ICJI 953 - DEFENSE - PROVIDING COMMERCIAL SEXUAL ACTIVITY

The defendant cannot be guilty of Providing Commercial Sexual Activity if, at the time of the alleged crime, the defendant was the victim of conduct prohibited by Human Sex Trafficking.

The State must prove beyond a reasonable doubt that defendant was not a victim of conduct prohibited by Human Sex Trafficking at the time of the alleged crime. If you have a reasonable doubt as to whether the defendant was, at the time of the alleged crime, the victim of conduct prohibited by Human Sex Trafficking, you must find the defendant not guilty.

Comment

I.C. § 18-5613(3). This instruction should only be given if there is evidence in the record from which a reasonable view of the evidence would support the defense.

ICJI 982 – DEFENSE: EXPOSING ANOTHER TRANSFER OF BODY FLUID WHICH MAY CONTAIN THE HIV VIRUS – (MEDICAL ADVICE)

The defendant cannot be guilty of ~~Exposing Another to~~ Transferring of Body Fluid Which May Contain the HIV Virus if:

1. before the transfer of [body fluid] [body tissue] [organs] occurred,
2. the defendant had been advised by a licensed physician that the defendant was not noninfectious.

~~If you have a reasonable doubt as to whether it did occur, you must find the defendant not guilty. The State must prove beyond a reasonable doubt that this did not occur. the defendant had not been advised by a licensed physician that the defendant was noninfectious. –If you have a reasonable doubt as to whether the defendant had been advised by a licensed physician that the defendant was noninfectious at the time of the alleged crime, you must find the defendant not guilty.~~

Comment

I.C. § 39–608(3)(b). This instruction should only be given if there is evidence in the record from which a reasonable view of the evidence would supporting the defense.

ICJI 983 – DEFENSE: ANOTHER TRANSFER OF BODY FLUID WHICH MAY CONTAIN THE EXPOSING ANOTHER TO HIV VIRUS – (CONSENT)

The defendant cannot be guilty of ~~Exposing Another to~~ Transferring of Body Fluid Which May Contain the HIV Virus if [name or initials of victim] consented to such exposure. [Name or initials of victim] would have consented to being exposed to the HIV virus if:

1. the defendant and [name or initials of victim] consented to engage in the sexual activity,
2. [name or initials of victim] was at least eighteen years of age, and
3. before the sexual activity, the defendant made a full disclosure to [name or initials of victim] of the risk of such activity.

The sState must prove beyond a reasonable doubt that [name or initials of victim] did not consent to being exposed to the HIV virus. If you have a reasonable doubt as to whether [name or initials of victim] did consent, you must find the defendant not guilty.

Comment

I.C. § 39–608(3)(a). This instruction should only be given if there is evidence in the record from which a reasonable view of the evidence would supporting the defense.

ICJI 1201 - ASSAULT DEFINED

An "assault" is committed when a person:

(1) unlawfully attempts, with apparent ability, to commit a violent injury on the person of another; or

(2) intentionally and unlawfully threatens by word or act to do violence to the person of another, with an apparent ability to do so, and does some act which creates a well-founded fear in the other person that such violence is imminent.

Comment

I.C. § 18-901. This instruction should be used ~~only~~ when the commission of an assault is an element of another crime, e.g., Assault with intent to commit a serious felony, I.C. § 18-909 ICJI 1208. The definition of assault ~~may~~ should be tailored to fit the facts of the case.

To prove assault, the State must prove an intent to threaten, by word or act, to do violence to another. State v. Palmer, 575 P.3d 53, 57 (Idaho Ct. App. 2025).

The inability to immediately complete the crime does not negate the intent element. *State v. Daniels*, 134 Idaho 896, 11 P.3d 1114 (2000).

Intent to threaten, by word or act, to do violence to another, as required to prove assault, may be inferred from the defendant's conduct or circumstantial evidence. State v. Palmer, 575 P.3d 53, 57 (Idaho Ct. App. 2025).

~~Legislative policy expressed within §§ 18-901 and 18-905 evidenced an intent that it was victim's reasonable perception that was dispositive of the question whether a weapon was deadly. State v. Cudd, 137 Idaho 625, 51 P.3d 439 (Ct. App. 2002).~~

ICJI 1206 – DEADLY WEAPON DEFINED

[A "deadly weapon or instrument" is one likely to produce death or great bodily injury. It also includes any other object that is capable of being used in a deadly or dangerous manner if the person intends to use it as a weapon.]

[Any firearm is a "deadly weapon,"; though unloaded or so defective that it cannot be fired.]

[A "firearm" is any device designed to eject or propel a projectile by the force of an explosion or other form of combustion.]

Comment

State v. Missenberger, 86 Idaho 321, 386 P.2d 559 (1963); *State v. Lenz*, 103 Idaho 632, 651 P.2d 566 (Ct. App. 1982). I.C. § 18-905(d).

This definition for deadly weapon or instrument should be used with ICJI 1205 (Aggravated Assault) and ICJI 1207 (Aggravated Battery). This instruction should not be used when addressing Extended Sentence for Use of Firearm or Deadly Weapon (I.C. § 19-2520).

Although "great bodily injury" is defined I.C. § 19-2520B, that definition is limited to I.C. § 19-2520B and is inapplicable to ICJI 1206. The committee recommends that the phrase "great bodily injury" not be defined. "The irresistible impulse to define words of ordinary English is unfortunately pervasive. It should be curbed." *People v. Kimbrel*, 174 Cal.Rptr. 816, 819 (Ct. App. 1981).

See also State v. Townsend, 124 Idaho 881, 865 P.2d 972 (1993), holding that a bare hand is not a deadly weapon under the aggravated assault and aggravated battery statutes, I.C. §§ 18-907 & 18-905; and *State v. Huston*, 121 Idaho 738, 828 P.2d 301 (1992), holding that a boot worn by the defendant can be a deadly weapon under I.C. § 18-905.

Legislative policy expressed within §§ 18-901 and 18-905 evidenced an intent that it was the victim's reasonable perception that was dispositive of the question whether a weapon was deadly. *State v. Cudd*, 137 Idaho 625, 51 P.3d 439 (Ct. App. 2002).

ICJI 1602 USE OF A FIREARM OR DEADLY WEAPON

[If you find] [Having found] the defendant guilty of [aggravated assault]; [aggravated battery]; [(assault) or (battery) with intent to commit a serious felony (murder, rape, ~~infamous crime against nature~~, mayhem, robbery, lewd and lascivious conduct with a minor under sixteen)]; [burglary]; [rescuing a prisoner]; [escape by one charged or convicted of a (felony) or (misdemeanor)]; [murder]; [manslaughter]; [assault with intent to murder]; [kidnapping]; [mayhem]; [rape]; [robbery], you must next consider whether the defendant displayed, used, threatened or attempted to use a [firearm] [or] [deadly weapon] in the commission of the crime.

[Firearm means any weapon capable of ejecting or propelling one or more projectiles by the action of any explosive or combustible propellant, and includes unloaded firearms and firearms which are inoperable but which can readily be rendered operable.]

[A deadly weapon is any object, instrument or weapon which is capable of producing, and likely to produce, death or great bodily injury.]

If you unanimously find beyond a reasonable doubt that the defendant used, displayed, threatened with or attempted to use a [firearm] [or] [deadly weapon] in the commission of the above crime, then you must so indicate on the verdict form submitted to you. If, on the other hand, you cannot make such a finding, then you must make that indication on the verdict form.

Comment

The court may consider whether to give this instruction along with instructions on the case in chief, or to allow the jury to deliberate on the case in chief first, and on the firearm enhancement second, depending on the case. *See State v. Stedtfeld*, 108 Idaho 695, 698, 701 P.2d 315 (Ct.App. 1985). Special verdict form ICJI 222 or 224 may be used.

This definition for deadly weapon should be used when addressing Extended Sentence for Use of Firearm or Deadly Weapon (I.C. § 19-2520). It should not be used with ICJI 1205 (Aggravated Assault) or ICJI 1207 (Aggravated Battery).

ICJI 1207 – AGGRAVATED BATTERY

In order for the defendant to be guilty of Aggravated 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 upon [name or initials of victim], [who was a pregnant female],
4. by [description of conduct alleged in the charging document], and
5. when doing so the defendant [caused great bodily harm, permanent disability, or permanent disfigurement] [or] [used a deadly weapon or instrument] [or] [used any vitriol, corrosive acid, or a caustic chemical of any nature] [or] [used any poison or other noxious or destructive substance or liquid] [or] [caused great bodily harm, permanent disability, or permanent disfigurement to an embryo or fetus].

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

Comment

I.C. § 18–907. *State v. Clark*, 115 Idaho 1056, 772 P.2d 263 (Ct. App. 1989). The committee recommends that the phrase "great bodily ~~injury~~harm" not be defined. Although "great bodily injury" is defined in I.C. § 19-2520B, that definition is limited to I.C. § 19-2520B and is inapplicable to ICJI 1207. "The irresistible impulse to define words of ordinary English is unfortunately pervasive. It should be curbed." *People v. Kimbrel*, 174 Cal.Rptr. 816, 819 (Ct. App. Cal. 1981).

Use of a deadly weapon to intimidate the victim to endure physical contact which she otherwise would have resisted or attempted to evade fits the definition of "use of a deadly weapon". *State v. Cates*, 117 Idaho 90, 785 P.2d 654 (Ct. App. 1989).

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.

For a definition of "battery", see ICJI 1203.

If applicable, the terms “embryo” or “fetus” shall be defined as any human in utero. I.C. § 18-907(2).

ICJI 343 MALICE DEFINED

The words "malice," and "maliciously," import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law. "Malice" and "maliciously" mean the desire to annoy or injure another or the intent to do a wrongful act.

Comment

I.C. § 18-101(4). ~~The words "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.~~

The definition of "malice" in I.C. § 18-101(4) leaves no room for an interpretation of the term to include negligence. *State v. Nastoff*, 124 Idaho 667, 862 P.2d 1089 (Ct. App. 1993).

The definition of "malice" in I.C. § 18-101(4) is not applicable to a charge of murder. *State v. Dillon*, 93 Idaho 698, 471 P.2d 553 (1970).

**ICJI 941 PATRONIZING A PROSTITUTE SOLICITING COMMERCIAL SEXUAL
ACTIVITY—ENHANCEMENT**

INSTRUCTION NO.

Having found the defendant guilty of [Soliciting Commercial Sexual Activity]~~[-Patronizing a Prostitute]~~, you must next decide whether the Defendant has pled guilty to or was found guilty of other charges of [Soliciting Commercial Sexual Activity]~~[-Patronizing a Prostitute]~~. The Sstate alleges:

1. The defendant [pled guilty to] [was found guilty of] a violation I.C. § 18-5614, [Soliciting Commercial Sexual Activity]~~[-Patronizing a Prostitute]~~ in [name of county], Idaho, Case No. ____[.] [,] and

2. The defendant [pled guilty to] [was found guilty of] a violation of I.C. § 18-5614, [Soliciting Commercial Sexual Activity]~~[-Patronizing a Prostitute]~~ in [name of county], Idaho, Case No. ____[.]

[3. (Add other prior offenses).]

The State must prove the existence of [this] [these] event[s] beyond a reasonable doubt.~~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. § 18-5614(2).