



Administrative Office of the Courts

Nashville City Center, Suite 600

511 Union Street

Nashville, Tennessee 37219

615 / 741-2687 or 800 / 448-7970

FAX 615 / 741-6285

DEBORAH TAYLOR TATE

Director

MEMORANDUM

(11/9/15)

This memorandum lists the instructions the Tennessee Pattern Jury Instruction Committee (Criminal) changed or created after the 19th edition of the book was published in 2015. The Administrative Office of the Courts' website includes Word and WordPerfect "without comments and footnotes" versions of the instructions at issue. The "with comments and footnotes" version of newly-created and/or substantially revised instructions, are attached to the memorandum which appears on the AOC's website. If the committee changed a comment and/or footnote but did not change the text of an instruction, the instruction will be listed below but it will not be posted on the AOC's website.

8.01 – Kidnapping

- a) The language in bold at the beginning of paragraph five should be revised to read as follows:
[only include if another offense against the person^{fn} was committed during the alleged kidnapping as to that same victim^{fn}, is charged in the indictment and is submitted to the jury:
- b) Add a footnote to the above sentence after the word "person" and renumber any remaining footnotes accordingly. The text of the footnote should read as follows:
This bracketed language is only required when an additional crime against the person, such as robbery, rape or assault, is also charged as to that same victim in the indictment. Crimes against property, such as aggravated burglary, do not raise due process concerns. State v. Alston, 465 S.W. 3d 555, 564 (Tenn. 2015).
- c) Add a footnote to the above revised sentence after the word "victim" and renumber any remaining footnotes accordingly. The text of the footnote should read as follows:
This jury instruction is not required when a defendant is not charged with additional crimes against the same victim. This language articulated in State v. White, 362 S.W. 3d 559 (Tenn. 2012), was only intended to address the due process concerns that arise when a defendant is charged with kidnapping a victim along with other crimes, such as robbery, rape or assault, that involve some inherent confinement of that victim. State v. Teats, 468 S.W. 3d 495 (Tenn. 2015) and State v. Williams, 468 S.W. 3d 510 (Tenn. 2015).

8.02 – Aggravated Kidnapping

- a) The language in bold at the beginning of paragraph five should be revised to read as follows:
[only include if another offense against the person^{fn} was committed during the alleged aggravated kidnapping as to that same victim^{fn} is charged in the indictment and is submitted to the jury:
- b) Add a footnote to the above sentence after the word “person” and renumber any remaining footnotes accordingly. The text of the footnote should read as follows:
This bracketed language is only required when an additional crime against the person, such as robbery, rape or assault, is also charged as to that same victim in the indictment. Crimes against property, such as aggravated burglary, do not raise due process concerns. State v. Alston, 465 S.W. 3d 555, 564 (Tenn. 2015).
- c) Add a footnote to the above revised sentence after the word “victim” and renumber any remaining footnotes according. The text of the footnote should read as follows:
This jury instruction is not required when a defendant is not charged with additional crimes against the same victim. This language articulated in State v. White, 362 S.W. 3d 559 (Tenn. 2012), was only intended to address the due process concerns that arise when a defendant is charged with kidnapping a victim along with other crimes, such as robbery, rape or assault, that involve some inherent confinement of that victim. State v. Teats, 468 S.W. 3d 495 (Tenn. 2015) and State v. Williams, 468 S.W. 3d 510 (Tenn. 2015).

8.03 – Especially aggravated kidnapping

- a) The language in bold at the beginning of paragraph five should be revised to read as follows:
[only include if another offense against the person^{fn} was committed during the alleged especially aggravated kidnapping as to that same victim^{fn} is charged in the indictment and is submitted to the jury:
- b) Add a footnote to the above sentence after the word “person” and renumber any remaining footnotes accordingly. The text of the footnote should read as follows:
This bracketed language is only required when an additional crime against the person, such as robbery, rape or assault, is also charged as to that same victim in the indictment. Crimes against property, such as aggravated burglary, do not raise due process concerns. State v. Alston, 465 S.W. 3d 555, 564 (Tenn. 2015).
- c) Add a footnote to the above revised sentence after the word “victim” and renumber any remaining footnotes according. The text of the footnote should read as follows:
This jury instruction is not required when a defendant is not charged with additional crimes against the same victim. This language articulated in State v. White, 362 S.W. 3d 559 (Tenn. 2012), was only intended to address the due process concerns that arise when a defendant is charged with kidnapping a victim along with other crimes, such as robbery, rape or assault, that involve some inherent confinement of that victim. State v. Teats, 468 S.W. 3d 495 (Tenn. 2015) and State v. Williams, 468 S.W. 3d 510 (Tenn. 2015).

8.05 – False imprisonment

- a) The language in bold at the beginning of paragraph five should be revised to read as follows:
[only include if another offense against the person^{fn} was committed during the alleged false imprisonment as to that same victim^{fn} is charged in the indictment and is submitted to the jury:

- b) Add a footnote to the above sentence after the word “person” and renumber any remaining footnotes accordingly. The text of the footnote should read as follows:

This bracketed language is only required when an additional crime against the person, such as robbery, rape or assault, is also charged as to that same victim in the indictment. Crimes against property, such as aggravated burglary, do not raise due process concerns. State v. Alston, 465 S.W. 3d 555, 564 (Tenn. 2015).

- c) Add a footnote to the above revised sentence after the word “victim” and renumber any remaining footnotes accordingly. The text of the footnote should read as follows:

This jury instruction is not required when a defendant is not charged with additional crimes against the same victim. This language articulated in State v. White, 362 S.W. 3d 559 (Tenn. 2012), was only intended to address the due process concerns that arise when a defendant is charged with kidnapping a victim along with other crimes, such as robbery, rape or assault, that involve some inherent confinement of that victim. State v. Teats, 468 S.W. 3d 495 (Tenn. 2015) and State v. Williams, 468 S.W. 3d 510 (Tenn. 2015).

10.22 – Soliciting minors to engage in [certain conduct]

- a) In element 1, change the word “is” to “was” so that it reads, “that the defendant was eighteen (18) years of age or older.”.

- b) Element 2 should be amended to read as follows:

That the defendant, by means of *[[oral] [written] [electronic] communication], [electronic mail] [internet services]* directly or through another intentionally *[[commanded] [requested] [hired] [persuaded] [invited] [attempted to induce]^{fn} [a person whom the defendant knew or should have known was less than eighteen (18) years of age]] [solicited]^{fn} a law enforcement officer posing as a minor whom the person making the solicitation reasonably believed to be less than eighteen (18) years of age* to engage in certain conduct;

- c) Add a new footnote after “attempted to induce” and renumber the remaining footnotes accordingly. The text of the new footnote should read as follows:

The trial judge may wish to charge criminal attempt if the language in this bracket is used. See T.P.I. – Crim. 4.01, Criminal Attempt.

- d) Add another new footnote after “solicited” in the revised element 2 above and renumber the remaining footnotes accordingly. The text of the new footnote should read as follows:

The trial judge may wish to charge solicitation if the language in this bracket is used. See T.P.I.- Crim. 4.02, Solicitation.

- e) Before the definition of “intentionally”, add the following definition in brackets:

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

(A) Maintain public order;

Or

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

And

(C) Investigate the commission or suspected commission of offenses.]^{fn}

- f) Add a new footnote to the end of the “law enforcement officer” definition and renumber any remaining footnotes accordingly. The text of the footnote should be as follows:

T.C.A. §39-11-106(a)(21).

- g) Delete the three defenses in brackets before the definition of “intentionally” and replace it with the following after the “intentionally” definition:
[It is no defense that *[the solicitation was unsuccessful] [the conduct solicited was not engaged in] [the law enforcement officer could not engage in the solicited offense] [the minor solicited was unaware of the criminal nature of the conduct solicited]*].^{fn}
- h) Add a new footnote to the end of the above defense and renumber any remaining footnotes accordingly. The text of the footnote should be as follows:
T.C.A. §39-13-528(b)
- i) Change the text of Comment One to read as follows:
A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor. T.C.A. §39-13-528(c).
- j) Add a new comment to the comment section as new number four. The text of the new comment should be as follows:
A defendant is subject to prosecution in this state for this offense for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state. T.C.A. §39-13-528(d).

31.01 – Controlled substances: Manufacture, deliver or sale

- a) Add the following sentence to the end of Comment One:
Even though the minimum sentence must be served at 100%, which precludes full probation, a defendant eligible for and granted diversion would not have to serve that minimum sentence, as “judicial diversion does not constitute a sentence, but rather a decision to defer sentencing.” *State v. Dycus*, 456 S.W. 3d 918, at 928 (Tenn. 2015).

31.04 – Controlled substances: Possession with intent to sell or deliver

- a) Add the following sentence to the end of Comment One:
Even though the minimum sentence must be served at 100%, which precludes full probation, a defendant eligible for and granted diversion would not have to serve that minimum sentence, as “judicial diversion does not constitute a sentence, but rather a decision to defer sentencing.” *State v. Dycus*, 456 S.W. 3d 918, at 928 (Tenn. 2015).

31.10 – [Keeping] [Maintaining] a [Location] for Drug Use

- a) Insert the language in attachment one to this memorandum as new instruction 31.10.

T.P.I. – Crim. 31.10

[KEEPING] [MAINTAINING] A [LOCATION] FOR DRUG USE

Any person who commits the offense of *[keeping] [maintaining] a [location]* for drug use is guilty of a crime.

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

- (1) that the defendant *[kept] [maintained] a [store] [shop] [warehouse] [dwelling] [building] [vehicle] [boat] [aircraft] [structure] [place];*

and
- (2) that the defendant knew at the time of *[keeping] [maintaining]* that it was *[resorted to by persons unlawfully using controlled substances for the purpose of using these substances] [used for [keeping] [selling] controlled substances].*

“Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 — 39-17-416. [_____] is a *[drug] [substance] [immediate precursor]* in Schedules I through VII of §§ 39-17-403 — 39-17-416.

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

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

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