**T.P.I. – CRIM. 6.08(a)**

**DOMESTIC ASSAULT (causing bodily injury to the victim):**

**SUPPLEMENTAL INSTRUCTION NUMBER ONE**

Members of the Jury, you have determined that the defendant is guilty of domestic assault as charged in Count \_\_\_\_\_\_\_\_ of the indictment.

It will now be your duty to determine whether or not the defendant has previously been convicted of domestic assault in which the defendant caused bodily injury to the victim and, if you so find, to fix the amount of the fine.

The statutory law of this state provides that when a person is convicted of a *[second] [third or subsequent]* offense of domestic assault causing bodily injury to the victim, then the punishment is enhanced or increased.

For conviction on the second offense there shall be imposed a fine of not less than three hundred fifty dollars ($350) nor more than three thousand five hundred dollars ($3,500) [For a third or subsequent conviction there shall be imposed a fine of not less than one thousand one hundred dollars ($1,100) nor more than five thousand dollars ($5,000)] **[Only for offenses committed on or after 1/1/17:** For a third or subsequent conviction in which the victim *[was a current or former spouse of] [was dating] [had dated] [was having or had in the past a sexual relationship with] [was the minor child of]* the defendant, there shall be imposed a fine not exceeding three thousand dollars ($3,000)]. You will first determine whether or not the defendant has been previously convicted of domestic assault causing bodily injury to the victim beyond a reasonable doubt. If you so find, then you will fix a fine within the instructed limits. Your verdict on each of these matters must be unanimous; each juror must agree to any verdict.

Any record of prior conviction[s] of the defendant is evidence which you may consider. A judgment of conviction of any person under the same name as that of the defendant may create an inference that the identity of such person is the same as the defendant. However, the jury is not required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by all the evidence in the case warrant the inference which the law permits the jury to draw.

If you find beyond a reasonable doubt that the conviction as set out in your previous verdict is a second conviction then your verdict will be:

We, the jury, find the defendant, , guilty of a second offense of domestic assault causing bodily injury to the victim.” You will then report the amount of the fine.

[If you find beyond a reasonable doubt that the conviction as set out in your previous verdict is a third or subsequent conviction then your verdict will be:

"We, the jury, find the defendant, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, guilty of a third or subsequent offense of domestic assault causing bodily injury to the victim." You will then report the amount of the fine.]

[**Only for offenses committed on or after 1/1/17:** If you find beyond a reasonable doubt that the defendant is a third or subsequent offender, then you must go further and decide whether or not at the time of the offense the victim *[was a current or former spouse of] [was dating] [had dated] [was having or had in the past a sexual relationship with] [was the minor child of]* the defendant. If you so find, then your verdict will be

"We, the jury, find the defendant, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, guilty of a third or subsequent offense of domestic assault causing bodily injury to the victim, and find the defendant’s relationship with the victim to be as follows:

." You will then report the amount of the fine.]

If, however, you find that the defendant has not been previously convicted of domestic assault causing bodily injury to the victim as charged in Count \_\_\_\_\_\_\_ of the indictment, or if you have a reasonable doubt thereof, then your verdict will be:

"We, the jury, find the defendant, \_\_\_\_\_\_\_\_\_\_\_\_\_, not guilty of Count \_\_\_\_\_\_\_."

In the event your verdict is that the defendant has committed a *[second] [third or subsequent]* offense, then the fine you fix would replace the fine you reported to the Court by your verdict for Count \_\_\_\_\_. On the other hand, if you find that the defendant is not guilty of Count \_\_\_\_\_\_, then the fine which you set in the trial on Count \_\_\_\_\_\_ would be the fine for the case. As previously stated, the Court would fix other punishment.

You will take with you the indictment and the Court's previous written instructions. You should follow such previous instructions as to the law of consideration of evidence, deliberations, reasonable doubt, witnesses and any other relevant matters.

You may now retire to consider your verdict.