

# Virgin Islands Model Criminal Jury Instructions

Introductory Notes for Users of the Model Instructions {page 3}

July 23, 2020

**D R A F T**  
for comment

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# *Introductory Notes for Users of the Virgin Islands Model Jury Instructions*

## **§ 1. Background**

It is been reported that 48 of the States have model sets of jury instructions, sometimes called "pattern jury instructions," which provide a framework or "model" for drafting the charge to the jury. Sometimes, only names and dates need to be filled in to adapt such a model instruction to fit the circumstances for a particular case. Often, however, there are cascading considerations that must be presented to the jurors in a logical sequence, so that they will be fully informed as to the applicable law and the options that they are permitted to consider when deliberating a case and the evidence that has been admitted into the record.

Learned Hand once commented on jury instructions that:

Whatever enlightenment a jury gets, ordinarily it gets from the colloquial charge, and from any later colloquial additions to it. It is exceedingly doubtful whether a succession of abstract propositions of law, pronounced staccato, has any effect but to give them a dazed sense of being called upon to apply some esoteric mental processes, beyond the scope of their daily experience which should be their reliance.

*United States v. Cohen*, 145 F.2d 82, 93 (2d Cir. 1942). The American Bar Association similarly recommends that:

Instructions to the jury should be not only technically correct but also expressed as simply as possible and delivered in such a way that they can be clearly understood by the jury.

Model jury instructions have been recommended to trial judges as providing a useful checklist of what must be covered in a jury instruction. But it is important that such model instructions be a supplement to, and not a replacement for, the judge's own research, creativity and style:

A collection of accurate, impartial and understandable pattern jury instructions should be available for use in criminal cases in each jurisdiction. Counsel and the court should nonetheless remain responsible for ensuring that the jury is adequately instructed as dictated by the needs of the individual case, and to that end should modify and supplement the pattern instructions whenever necessary.

*ABA Standards for Criminal Justice, Trial by Jury* § 15-3.6(b).

## § 2. *Primary Goal: Understandable Instructions*

The overriding purpose of all jury instructions is to furnish guidance to the jury in their deliberations, and to aid them in arriving at a proper verdict. Accordingly, jury instructions must inform jurors about the *elements or defenses* in a given case, i.e., the legal principles they must apply to the facts as they find them, in the process of coming to a verdict. The goal, therefore, is to make instructions easy for the jury to understand, so that the jurors may reliably apply the legal principles involved in a case without being hampered in that effort by their status as laypeople. Based on the foregoing, there are three characteristics of good jury instructions:

- Accuracy
- Appropriate Coverage and Organization
- Clarity, Simplicity and Neutrality of the Wording.

Good organization is crucial if the jurors are to understand the instructions as a whole. The instructions must be organized and presented in a logical sequence to help compensate for the jurors' lack of familiarity with legal concepts.

A continuing issue with all jury instructions centers around language comprehension difficulties for the average juror. Social scientists have shown over many decades that juries frequently have difficulty understanding the instructions given to them. Problems of "*legalese*" and the tendency of legislatures to adopt complex sentence structures and technical jargon make the task of providing clear and understandable jury instructions very challenging.

Consistent with these overarching principles, the Virgin Islands Model Criminal Jury Instructions are a set of accurately and neutrally worded model charges intended as a resource for trial judges and counsel trying criminal cases in the courts of the territory. The instructions are, of course, based on statutory provisions and prevailing case law. The Committee does not receive adversarial briefs or arguments on unresolved legal issues related to a charge, and accordingly does not necessarily attempt to resolve such issues. Further, the facts of a particular case may call for a modification of a model charge. Of necessity, such determinations are left to the learned and sound discretion of the trial court.

The Virgin Islands Model Criminal Jury Instructions are provided for the benefit of judges, lawyers and self-represented litigants alike. The Instructions are advisory only. Publication of the Instructions does not imply either approval or authoritative construction by the Supreme Court. As of the date of drafting these model instructions, each of the primary interpretive decisions by the Supreme Court of the Virgin Islands that has been located by the Committee is cited in the *Sources & Authority* entry following the body of the Instruction text. It is expected that the drafting Committee will provide periodic updates for these *Sources & Authority* entries, as case law develops.

The Virgin Islands Model Criminal Jury instructions are designed to be straightforward, unbiased, and simple: the instructions state what the law is, and not what it is not. In drafting the Virgin Islands Model Criminal Jury Instructions, the effort has been made, at every turn, to keep the expressions simple and consistent. The Committee has also striven to employ plain language in the model instructions, and to minimize the use of “legalese” wherever possible.

### **§ 3. *Format of the Model Instructions* --**

Each of the model instructions set out in this volume are identified by number and title, and have several elements:

- The title and text of the instruction;
- a “Sources & Authority” listing following the body of each instruction, which lists any statutes that govern the particular offense, and cites all Supreme Court of the Virgin Islands case decisions discussing the particular crime;
- a “Practice Note” that may quote the text of critical statutory provisions relating to the particular offense, and provide a description of application issues that have arisen in reported case law; and
- special “*ALERT*” notations, which are provided where important *open issues* or important *interconnections* between diverse statutes or rules exist, to draw attention to potential sources of difficulties or challenges pertaining to the use of an instruction.

#### **Singular and Plural**

These instructions were drafted for the common case in which a single defendant is on trial. The wording can easily be adapted for use in multi-defendant cases, however.

#### **Names, Dates and Gender**

The model instructions have several means of highlighting places where a properly tailored jury instruction will insert “him or her” or the name of the defendant, or in some crimes, the name of the victim. The Virgin Islands Model Jury Instructions are drafted without using gender-specific pronouns whenever reasonably possible. However, sometimes the simplest, most direct statement requires using pronouns. The Committee uses pronouns of both genders as its protocol. In the trial of criminal cases, often there will not be time to edit the instructions to fit the circumstances of a particular case, and

the criminal instructions are drafted so that they might be read without further concern for pronoun gender.

### **Titles and Definitions for Instructions**

The titles of the instructions are directed to lawyers and sometimes use words and phrases not used in the instructions themselves. The title is not a part of the instruction, and may be removed prior to presentation to the jury.

Some instructions contain within themselves any applicable definition of terms needed by the jury to consider a particular charge. The Legislature of the Virgin Islands routinely includes a “Definitions” section at the outset of a Chapter of the Code that deals with a particular crime and its variants. The Committee has noticed that many times the definitions sections include large numbers of terms, only a few of which are operative in any given criminal statute within that Chapter of the Code. Hence we strongly advise that *only those definitions that play a role in the crime actual charged in the pending case be given to the jury, to avoid confusion over complexities and irrelevant concepts that are not part of the jury’s task.*

### **Alternatives or Options**

Many of the statutes creating criminal offenses for the Virgin Islands are written to trigger charges when one or more of *several alternative means of violating the statute are used*. As a result, the draft instructions separate the alternatives so that counsel and the court who are working to shape instructions based on the legal theories actually being presented can *select the conduct or other options derived from the governing statutes and case law that apply on the facts actually being litigated.*

*\* Select element(s) charged in this case \**

This signal (**provided in red type**) is used in many of the Instructions to indicate that the elements presented immediately thereafter are alternatives, and the task of Court and counsel is to utilize whichever of the versions of the crime has been charged and for which proof has been offered. One or more of the statutory options may be an issue for inclusion in the instructions in any given case.

To facilitate the selection of the options that apply based on the evidence admitted in a given case, the model instructions feature square brackets, angle brackets, parentheses, semicolons, and asterisks:

- **Square brackets** [ ] are used in instruction language to indicate (1) alternative wording choices that counsel or the judge will need to select from to correspond to the facts of the case, or (2) optional additional language that counsel or the judge may choose to include in an instruction, if desired. Bracketed language should only be added to an instruction if it is supported by the facts. Some

instructions feature multiple options for additional or alternative language within a single set of brackets, divided by one or more semicolons. You will have to read through the instruction to see exactly where to make an addition or substitution by using the bracketed language options, and modify the instruction so that only the pertinent option or options are presented to the jury when the instruction is given. The brackets should be omitted from any written version of the instruction that is ultimately provided to the jury.

- **Angle brackets** < > are used as “placeholders” for specific names of people, places, things, amounts, or dates and times, indicated in italics, that counsel or the Judge will need to supply based on the facts of the case indicate that additional information, such as a certain name, a specific description of some item, or other context-specific language is required to complete the instruction. When agency questions arise, for example, the only way to make the instruction intelligible is to name the principal, the agent and the third party. Similarly, in defamation cases, the offending words may either need to be precisely set out, or referred to specifically, such as by the date of a letter or other writing that contains them. Places in an instruction where this information should be supplied are indicated using expressions in angle brackets. These expressions should be omitted from any written version of the instruction that is provided to the jury.
- **Parentheses** ( ) are used in instruction language to indicate gender-specific pronoun choices that counsel or the judge will need to select from to correspond to the facts of the case. Parentheses are also frequently used for main paragraph and subparagraph designators within instructions.
- **Semicolons** ; are used to separate available language options within the text of an instruction. They may appear inside and/or outside of brackets and/or parentheses. When a semicolon appears inside of brackets or parentheses, it functions as the word “**or**”. When a semicolon appears after the end of or in between brackets or parentheses, it likewise functions as the word “or”, separating the options presented by the language that is enclosed within the parentheses or brackets. When a semicolon is followed by “and” or “or”, it functions as a **comma**.
- **Asterisks** \* , **when used along with the term “Option”**, are used to highlight available alternative sentences or paragraphs within the text of an instruction that counsel or the judge will need to select from when drafting and giving an instruction to the jury. However, only the alternative sentence(s) or paragraph(s) of a model instruction that apply, based on the facts of the case, should be used when the jury is ultimately instructed. In addition, language

indicating that counsel or the judge should select from a set of options (1A, 1B, 1C, etc.) is intended to guide counsel and the court, and should not be given to the jury.

### **Organization of the Instructions**

The instructions are organized into 57 Chapters, which correspond to the broad categories of crimes available for prosecution in the Virgin Islands. Overall the Chapters shown on the preceding list of Chapter titles can be summarized as follows:

- Chapters 1 and 2 set forth general instructions on the management of the jury's functions in a criminal trial, and recurring evidentiary or procedural issues about which it is necessary to advise the jury.
- Chapter 3 addresses *defenses* that may be raised to a large number of crimes prosecuted in the Virgin Islands.
- Chapters 4 through 57 each cover a single category of offenses, such as Arson or Homicide, and each of these chapters may have numerous instructions within it, depending on how many related offenses are recognized in the Virgin Islands.

### **Finding Instructions by Topic**

The bulk of the Virgin Islands Model Jury Instructions are located in Chapters 3 through 57. Each Chapter of the Model Instructions contains a table of contents. The Chapters are organized alphabetically by groups of crimes by topics that are generally related by legal concepts or themes

The *Table of Chapters* is hot-linked to the full text of the instructions in each chapter – and each Chapter of the Instructions starts with a *mini-table of contents* listing each of the Instructions within that category. The mini-TOC in each Chapter is itself hot-linked to the text of the specific Instructions in that Chapter.

### **§ 4. *Adapting and Modifying the Model Instructions* --**

Some instructions can be given just as they appear in the book. Many will require some changes to make them fit the facts of a particular case. No book of instructions can possibly anticipate the rich variety of facts that arise in litigation. The instructions provided in this volume are models or patterns from which to construct instructions that are apt for a case. Therefore, an instruction can be modified—or even created—to fit the particular facts and circumstances.

Since any model instruction is designed to apply to a range of factually-distinct cases, at minimum a model instruction should always be pruned of any language that is



irrelevant to the fact pattern of the case being tried. These model instructions were not designed, nor should they be used, for verbatim recitation. They should always be adapted to each judge’s speaking style and tailored to the facts of the case.

When modifying a model instruction, or when crafting a custom instruction “from scratch,” it is important to bear in mind that appellate courts have often cautioned against using the language appearing in a specific appellate opinion for a jury instruction, given that appellate opinions are meant to provide a rationale for a decision, and therefore may not translate immutably into jury instructions. Accordingly, the indiscriminate use of language from appellate opinions in a jury instruction is discouraged, because statements appearing in such opinions, while authority for the propositions set forth there, are not necessarily proper language for jury instructions. For example, language appearing in these opinions may include argumentative statements about legal matters that is inappropriate for consideration by the jury. Nevertheless, while it may not be always advisable to copy the language of the courts as applied to the peculiar facts of one case then under consideration, and to embody such language in an instruction in another and a different case, it may properly be done if the same legal principle involved is applicable.

Many studies, by scholars, lawyers and judges, have reported suggestions for making juror comprehension of instructions easier:

- Use a logical organization or sequence
- Use short, simple sentences and avoid grammatically complex sentences.
- Utilize positive rather than negative formulations, the active rather than the passive voice, and transitive rather than intransitive verbs whenever possible.
- Use concrete rather than abstract words.
- Employ parallel construction of clauses and phrases, as an aid to aural comprehension and memory.
- Avoid legal jargon and uncommon words.
- Avoid homonyms (words that sound alike) and words with more than one meaning (such as “court” to refer to “judge”); if used, they should be clarified through the use of synonyms, examples, and contrast with their opposites.
- Avoid the use of negatively-modified words that may be misheard (e.g. use “rude” rather than “impolite”).
- Avoid using words that are uncommon in everyday speech and writing (“accomplice, admonish, applicable, corroborate, credence, deliberation, demeanor,

discredit, impeach, improbability, insofar, misrecollection, pertain, scrutinize, trait, transaction, unsupported, veracity”).

- Avoid using words to convey their less common meanings (“burden of proof, incompetent, court [to refer to the judge rather than the building or institution], disregard evidence, find a fact, material matter, sustain objections”).

- Avoid using legal terms not in common use unless it is really necessary to do so.

- Avoid sentences with multiple subordinate clauses. Particularly avoid placing multiple subordinate clauses before or within the main clause, so that the listener must wait for the end of the sentence to learn what it is all about. Complex grammatical structures, rather than sentence length per se, is the problem to be avoided.

- Avoid double negations (“the defendant is charged only with ... and not with ...”).

- Use a concrete style rather than an abstract one. Speak to the jury in the second person rather than in abstract generalizations.

- Do not instruct the jury about things that they don’t need to know (e.g. do not distinguish direct and circumstantial evidence at length before telling the jury that the distinction is irrelevant to their consideration of the evidence).

Several leading scholars and judges have encouraged wording jury instructions as simply as possible:

- Draft in the singular (refer to an “issue rather than “issues”);

- Use base verbs, not nominalizations (“we discussed” rather than “we had a discussion”);

- Use active voice, not passive (“the clerk must tax costs,” rather than “costs must be taxed by the clerk”);

- Draft in the present tense and address the jury directly (“the court requires” rather than “the court will require” and “you must find” rather than “the jury must find”);

- Use shorter sentences, omitting surplus words (“her death” rather than “the fact that she died”—unless required by the sense of the instruction);

- Arrange words with care, and use numbering or listing where appropriate;

- Avoid multiple negatives (avoid “not uncommon”);

- Avoid jargon; simplify as much as possible (say “upon receiving” instead of “upon receipt”);

- Avoid “wh” phrases (avoid clauses beginning with “which”).

In summary, an accurate statement of the law is critical to instructing the jury, but accuracy is meaningless if the statement is not understood, or is misunderstood, by jurors. Accordingly, when a lawyer or trial judge drafts special instructions, the Committee suggests the following guidelines:

- Use only necessary words.
- Use short sentences.
- Avoid negatives.
- Use active voice.
- Use simple, understandable words whenever possible.
- Keep the instructions as brief as possible.
- Avoid repetitious, abstract, or argumentative instructions.

**§5. *Considerations for Counsel and the Judge; Proper and Improper Instructions.* --**

Generally, it is considered to be the duty of counsel to aid the court in the function of instructing the jury. The very purpose of permitting requests for instructions is so that each of the litigants have an opportunity to fully inform the jury as to the law and their respective theories of the case. If either party desire any specific instruction to be given, he has the right to ask for it, and the court is bound to give it, provided it expounds the law correctly upon any evidence before the jury. In addition, it is axiomatic that a party is entitled to have jury instructions that address the party's theory of the case, using the language of the party's own choosing, so long as that theory is supported both by law and fact. Accordingly, the court should instruct the jury on the law that is supported by the evidence to the extent necessary to allow each side to have a basis for arguing its theory to the jury.

Counsel, and the Court, must bear in mind that an instruction that accurately states the law applicable to the case shall not be refused simply because it is not one of these model jury instructions. However, it is also important to keep in mind that not all arguments that counsel, or the parties, intend to make deserve a jury instruction.

*Evidence supporting instruction.* Only those arguments and theories that are supported by appreciable evidence in the record entitle a litigant to request that an instruction be given embodying such arguments and theories. An instruction cannot be given because it is in line with a litigant's theory, unless that theory finds support in the evidence. Accordingly, a court does not err in refusing to grant instructions requested by a party that are in line with its theory of the case where there is no evidence in the record

supporting that theory. More than a scintilla of evidence is necessary to support an instruction.

Instructions that are nothing more than abstract statements of law are improper, even if they are technically accurate, where they are inapplicable to the facts of the case.

*Multiple instructions on one issue avoided.* Secondly, multiple instructions covering the same legal principles are undesirable, when one instruction correctly states the law. This is so because multiple instructions on the same principle can result in juror confusion and thereby unnecessarily increase the difficulty of deliberations. Accordingly, refusal to permit the jury to receive other instructions on a legal principle fully and fairly covered by the instructions already granted is not an abuse of discretion.

*Undue emphasis avoided.* An instruction is improper if it singles out one portion of the evidence, and unduly emphasizes it over other facts equally pertinent to the jury's resolution of an issue.

It is the judge's duty to instruct the jury clearly and correctly as to the law applicable to the issues in the case. The charge must set out the elements of the crime, and must reflect current controlling precedent.

A trial judge may instruct in his or her own language, as long as the instructions are complete and correct. The court is not required to use the exact language requested by counsel.

The judge need not instruct on the same legal principle in two or more different ways, even though each separate instruction may, standing alone, be a correct statement of the law. Repetitious instructions may unduly emphasize one side's theory of the case or may confuse the jury, and refusing to give them is not error. However, the trial court has discretion to determine whether repetition is necessary to assist the jury.

As long as the judge gives adequate and clear instructions on the applicable law, the judge has discretion as to the phraseology, method and extent of the charge, including whether to instruct the jury generally or specifically, and whether to utilize his or her own words or the words of the party making the request.

The judge may be required to charge on a matter of law appropriately raised, even if the requested instructions are incorrect in particulars, and therefore needs to be corrected before it can be appropriately given to the jury. But the judge is not required to charge on an issue not relevant to the evidence, and generally should not, even if a tendered instruction is correct as an abstract principle of law.

**§6. *Special Considerations for Jury Instructions in Criminal Cases.* --**

It is fundamental in criminal cases that that the jury must be informed as to the essential elements of the offense, because a correct statement of the law is one of the essentials of a fair trial. Unless the elements of the crimes charged are sufficiently defined by instructions that are available to the jury during its deliberations, the jury cannot properly ascertain whether the People has carried its burden of proof. In addition, instructions on some topics, such as the presumption of a defendant's innocence and the People's burden to prove each element of the crime beyond a reasonable doubt, are deemed to be similarly essential in most every case. Both the People and the defendant are entitled to appropriate instructions on the law applicable to the case. This includes instructions addressing lesser-included offenses, but only if those instructions are supported by the evidence. More than a scintilla of evidence is necessary to support such an instruction.

Unlike the rule applicable in civil cases, in a criminal trial, the trial court must correct or amend an improper instruction *sua sponte* if a proper instruction on a subject or issue is necessary for the jury to understand and resolve the case. In addition, in criminal cases, it would be not only proper, but the duty of the court, even though unasked, to instruct the jury upon the principles of law by which they should be governed in rendering their verdict. Accordingly, in a criminal case, when a principle of law is deemed to be materially vital to a defendant, it is reversible error for the trial court to fail to correct a defective instruction or verdict form when the error is patent or the subject of a proper objection, even if the defendant fails to proffer alternative instructions or verdict forms.

Generally, a trial court is not required to amend or correct an erroneous instruction, but the rule is subject to the limitation that when the principle of law is materially vital to a defendant in a criminal case, it is reversible error for the trial court to refuse a defective instruction instead of correcting it and giving it in the proper form because the jury should not be left in the dark on the subject. But if the principle of law is not deemed to be materially vital, a trial court ordinarily does not have an affirmative duty to give a jury instruction on a particular legal principle when a criminal defendant fails to request that the jury be instructed on that principle. Instead, the usual rule applies: counsel is required to state any objection to the trial court's instruction and to ask the court for any other instruction on the subject that he or she deems necessary, and, the failure to do so bars appellate consideration of such objections and arguments.

**§7. *Suggestions for Improvements are Welcome --***

The Virgin Islands Model Jury Instructions are a continual work in progress, with new and amended instructions expected to be published periodically. Judges and lawyers who draft a clearer instruction than is contained in these model instructions are also encouraged to share that language with the drafting Committee. Please send comments and suggested provisions to:

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**1.01 Evidence – What it Is and Is Not** [Third Circuit model]

You must make your decision in this case based only on the evidence that you see and hear in the courtroom. Do not let rumors, suspicions, or anything else that you may see or hear outside of court influence your decision in any way. The evidence from which you are to find the facts consists of the following:

- The testimony of the witnesses;
- Documents and other things received as exhibits; and
- Any fact or testimony that is stipulated; that is, formally agreed to by the parties.

The following are not evidence:

- Statements and arguments of the lawyers for the parties in this case;
- Questions by the lawyers and questions that I might ask. You must not assume that a fact is true just because one of the lawyers or I ask a question about it. It is the witness answers that are evidence. Of course, you may need to consider the question to know what a witness means by his or her answer. For example, if a witness answers yes to a question, you will have to consider the question to understand what the witness is saying.
- Objections by lawyers, including objections in which the lawyers state facts;
- Any testimony I strike or tell you to disregard; and
- Anything you may see or hear about this case outside the courtroom.

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience and common sense tell you that certain evidence reasonably leads to a conclusion, you may reach that conclusion.

The rules of evidence control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence, and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. An



**objection simply means that the lawyer is asking me to decide whether the evidence should be allowed under the rules. Lawyers have a responsibility to their clients to make objections when they think evidence being offered is improper under the rules of evidence. You should not be influenced by the fact that an objection is made.**

**You should also not be influenced by my rulings on objections to evidence. If I overrule an objection, the question may be answered or the exhibit may be received as evidence, and you should treat the testimony or exhibit like any other. I may allow evidence (testimony or exhibits) only for a limited purpose. If I do that, I will instruct you to consider the evidence only for that limited purpose, and you must follow that instruction.**

**If I sustain an objection, the question will not be answered or the exhibit will not be received as evidence. Whenever I sustain an objection, you must disregard the question or the exhibit entirely. Do not think about or guess what the witness might have said in answer to the question; do not think about or guess what the exhibit might have shown. Sometimes a witness may have already answered before a lawyer objects or before I rule on the objection. If that happens and if I sustain the objection, you should disregard the answer that was given.**

**Also, I may order that some testimony or other evidence be stricken or removed from the record. If I do that, I will instruct you to disregard that evidence. That means, when you are deciding the case, you must not consider or be influenced in any way by the testimony or other evidence that I told you to disregard.**

**Although the lawyers may call your attention to certain facts or factual conclusions that they think are important, what the lawyers say is not evidence and is not binding on you. It is your own recollection and interpretation of the evidence that controls your decision. Also, do not assume from anything I do or say during the trial that I have any opinion about the evidence or about any of the issues in this case or about what your verdict should be.**

#### **ADDITIONAL EXAMPLE**

##### **WHAT IS EVIDENCE, INFERENCES**

**The evidence from which you are to decide what the facts are consists of sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness, and the exhibits that have been received into evidence.**

**Although you may consider only the evidence presented in the trial, you are also permitted to draw reasonable conclusions, based on common sense and personal experience, from facts that you find to have been proven.**

##### **WHAT IS NOT EVIDENCE**

**Remember that certain things are not evidence:**

(1) Unless I have specifically instructed you otherwise, nothing that the attorneys have said is evidence, including their opening statements, closing arguments, objections, and questions. The lawyers are not witnesses, and what they say may help you interpret the evidence, but it is not evidence. If the facts as you remember them from the evidence differ from the way the lawyers have stated them, your memory of the facts controls. Lawyers also have a duty to their clients to object when they believe a question or exhibit is improper under the rules of evidence. You should not be influenced by the objections or by my rulings on them. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been. Similarly, if a lawyer asks a question that asserts something to be a fact, you may not consider the assertion by the lawyer as any evidence of that fact. Only the witnesses' answers are evidence.

(2) Anything that I have excluded from evidence or ordered stricken and instructed you to disregard is not evidence.

(3) The Amended Information is not evidence. The fact that the defendant has been charged with crimes proves nothing.

(4) And, anything you may have seen or heard when the Court was not in session is not evidence.

### ***Practice Note***

If the trial judge knows that he or she will be taking judicial notice of any facts, the judge should include in describing what is evidence, (4) Any facts that will be judicially noticed--that is, facts which I say you may accept as true even without other evidence.

## **1.02 Duties of Jury**

**It is your duty to find the facts from all the evidence. To those facts you will apply the law as I state it. Instructing you on the law is my duty as the judge, and you must follow the law as I instruct you whether you agree with it or not.**

**In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And, you must not read into these instructions or into anything I have said or done any suggestion as to what you should find the facts to be or what verdict you should return. Those are matters entirely up to you. Except for my instructions to you on the law, you should disregard anything I may have said or done during the trial in deciding the facts.**

### **1.03 Reasonable Doubt and Presumption of Innocence**

The defendant is presumed to be innocent. You should not assume the defendant is guilty because he has been charged and is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the People prove each and every element of the crime beyond a reasonable doubt. This does not require proof beyond all possible doubt, nor are the People required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction.

There is no burden on the defendant to produce any evidence.

A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

#### **Sources & Authority**

*Rodriguez v. Bureau of Corrections*, 2019 VI 10; *Victor v. Nebraska*, 511 U.S. 1 (1994); *Cage v. Louisiana*, 498 U.S. 39, 41 (1991); *Mullaney v. Wilbur*, 421 U.S. 684 (1975); *In re Winship*, 397 U.S. 358 (1970)

#### **ADDITIONAL EXAMPLES**

##### **PRESUMPTION OF INNOCENCE - BURDEN OF PROOF**

The defendant has pled not guilty to the crimes charged. The law presumes that the defendant is innocent, and the defendant has no obligation to prove his innocence or to present any evidence. It is up to the People to prove beyond a reasonable doubt that the defendant is guilty, and this burden stays on the People at all times. You must find the defendant not guilty unless the Government convinces you beyond a reasonable doubt that he is guilty.

##### **REASONABLE DOUBT**

A reasonable doubt is what the term implies, a doubt that is reasonable. The People are not required to produce evidence that will exclude every conceivable possibility of the defendant's innocence because almost everything in life is open to some degree of doubt. The People are only required to prove the defendant's guilt beyond a reasonable doubt, not beyond all possible doubt. A reasonable doubt is a fair doubt that a reasonable person would have based upon reason, logic, experience, and common sense after weighing all the evidence, the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, then, must be proof of

such a convincing character that you would not hesitate to rely and act upon it in the most important of matters.

While it is rarely possible to prove anything to an absolute certainty, you must also remember that the defendant must never be convicted on mere suspicion or speculation.

Reasonable doubt may also arise from a lack of proof or the nature of the evidence. If the jury views the evidence in the case as reasonably permitting either of two conclusions, one of innocence, the other of guilt, the jury must adopt the conclusion of innocence.

### ***Practice Note***

This instruction complies with constitutional requirements as expressed in *Victor v. Nebraska*, 511 U.S. 1 (1994).

Due process of law requires that the People prove beyond reasonable doubt every element necessary to constitute the crime charged. *Mullaney v. Wilbur*, 421 U.S. 684, 699–700 (1975), citing *In re Winship*, 397 U.S. 358 (1970). A reasonable doubt is not as clear or firm as a “grave” or “substantial” doubt, and – in terms of the foundation the People must provide to the jurors – a verdict of guilt may be predicated upon evidentiary certainty; moral certainty is not required. *Cage v. Louisiana*, 498 U.S. 39, 41 (1991). Consequently, an instruction on reasonable doubt which combined the terms grave, substantial and moral certainty as on a continuum, raised an undue risk that the jury held the accused to an unconstitutionally high standard. *Id.*

## **1.04 Judging the Evidence**

**There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would deal with any important question. You are expected to use your good sense and give the evidence a reasonable and fair construction in the light of your common knowledge of the way people behave.**

**If the defendant has been proven guilty beyond a reasonable doubt, say so.**

**If the defendant has not been proven guilty beyond a reasonable doubt, say so.**

**Your power is not arbitrary, but must be exercised with discretion and in accordance with the rules of evidence as I instruct you. It would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court. Justice through trial by jury depends upon the willingness of each individual juror to seek the truth from the same evidence and to arrive at a verdict by applying the same rules of law.**

## **1.05 Identity of Defendant as the Perpetrator**

The People bear the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the crime charged. If the People [have; has] not met this burden, you must find the defendant not guilty.

### ***Practice Note***

This instruction should be given *if* the identity of the perpetrator is an issue.

## **1.07 Note Taking by Jurors**

*\* Option 1 - Note taking prohibited*

Regarding note-taking, you will not be taking notes because, while note-taking might appear helpful, often the note-taker gets the evidence or testimony down incorrectly. Then, in the jury room, that erroneous note may have an overbearing influence or impression upon those who did not take notes. The best system, and the time-tested system, is for each juror to listen carefully and observe carefully everything that takes place in this case. When you have done that, you will go to your jury room and discuss the facts intelligently and be in a position to arrive at a fair and just verdict. I am sure that each of you will do that.

The reason for the procedural rule prohibiting note-taking is to emphasize your duty and responsibility under your oath to pay close attention to the testimony. Please do not let your thoughts wander or your eyes rove around the courtroom, but give strict attention to the witness as he or she testifies. It will be your common memory that you rely upon in deciding factual issues involved in this case.

*\* Option 2 - Note taking authorized*

Members of the jury, you may take notes during trial if you wish. Pads and pens will be made available. Any notes that you take will be for your personal use. However, you should not take them with you from the courtroom. During recesses, the bailiff will take possession of your notes and will return them to you when we reconvene. You may have those notes with you when you deliberate at the end of the case.

If you take notes, do not get so involved in note-taking that you become distracted from the proceedings. Please be cautious because it is possible that you may miss hearing some testimony if taking notes at the time. Be sure to listen to the evidence and observe the demeanor of the witnesses on the stand. The witness's demeanor is something you may consider in determining the credibility of that witness.

**Your notes should be used only as aids to your memory and should not be allowed to take precedence over your independent memory of facts. The notes are only for the juror's personal use in refreshing recollection of the evidence. When in deliberations at the end of the case, do not rely on the recollection of a juror who took notes about the testimony of a witness solely because the juror took notes. You should not be unduly influenced by the notes of other jurors. As we all know, notes can be wrong. Notes are not entitled to any greater weight than each juror's memory of the evidence. Those jurors who do not take notes should rely on their independent recollection of the evidence and not be influenced by the fact that another juror has taken notes. Keep in mind that every word spoken in the courtroom is recorded verbatim and can be replayed for you during deliberations if necessary.**

**If there is a discrepancy between a juror's recollection of the evidence and the juror's notes, you, the jury, should request a read-back of the record. The court's transcript prevails over a juror's notes. Your notes are not a substitute for the official record or for the governing principles of law which I will charge to you later.**

**After you have completed your deliberations, the bailiff will deliver your notes to me. They will be destroyed. No one will ever read your notes.**

#### ADDITIONAL EXAMPLE

##### USE OF NOTES

Some of you may have taken notes. Those notes are not evidence, should only aid the memory of the juror who took the notes, and must not be given greater weight than each of your individual, independent memories of the evidence. Any notes taken by any juror should not be disclosed to anyone other than a fellow juror and must be given to the marshal at the end of the case.

### ***Practice Note***

The Third Circuit reports: Two experimental studies suggest that juror note-taking may improve jurors functioning. Lynne Forster Lee et al., *Effects of Notetaking on Verdicts and Evidence Processing in a Civil Trial*, 18 Law & Hum. Behav. 567 (1994); David L. Rosenhan et al., *Notetaking Can Aid Juror Recall*, 18 Law & Hum. Behav. 53 (1994). Another study suggests that note-takings usefulness may vary depending on the complexity of the case. Lynne Forster Lee & Irwin A. Horowitz, *Enhancing Juror Competence in a Complex Trial*, 11 Applied Cognitive Psychology 305 (1997). Field studies failed to detect benefits from note-taking, but may not have been likely to do so given their design. Steven D. Penrod & Larry Heuer, *Tweaking Commonsense: Assessing Aids to Jury Decision Making*, 3 Psychol. Pub. Pol'y & L. 259 (1997); Larry Heuer & Steven Penrod, *Juror Notetaking and Question Asking During Trials: A National Field Experiment*, 18 Law & Hum. Behav. 121 (1994); Larry Heuer & Steven Penrod, *Increasing Jurors Participation in Trials: A Field Experiment with Jury Notetaking and Question Asking*, 12 Law & Hum. Behav. 231 (1988). Those field studies found that the asserted

disadvantages of note-taking did not materialize. Note-taking gets generally (though not uniformly) positive reviews from judges, lawyers, and jurors. Leonard B. Sand & Steven Alan Reiss, *A Report on Seven Experiments Conducted by District Court Judges in the Second Circuit*, 60 N.Y.U. L. Rev. 423 (1985); Neil P. Cohen & Daniel R. Cohen, *Jury Reform in Tennessee*, 34 U. Mem. L. Rev. 1 (2003).

### **1.09 Questions by Jurors of Witnesses** [Third Circuit model]

*\* Option 1:*

**Only the lawyers and I are allowed to ask questions of witnesses. You are not permitted to ask questions of witnesses. <Describe or explain specific reasons for not allowing jurors to ask questions.> If, however, you are unable to hear a witness or a lawyer, please raise your hand and I will correct the situation.**

*\* Option 2:*

**Generally, only the lawyers and I ask questions of witnesses. However, I may allow you to submit questions for some witnesses. After the lawyers have finished asking their questions on direct and cross-examination but before I have excused the witness, if you have a question on an important matter and feel that an answer would be helpful to you in understanding the case, please raise your hand. Write your question on a piece of paper and hand it to my courtroom deputy, who will give the question to me. Do not discuss your question with any other juror.**

**You should only submit questions that will help you decide important issues in this case. Also, the rules of evidence must be considered before any questions can be approved. Therefore, I will discuss your question with the lawyers, outside your hearing, and decide whether the question is allowed under the rules. If the question is not allowed under the rules, I will not ask it. You should not make any conclusions from the fact that I do not ask the question. You should not take it personally if I do not ask the question or if I ask it in a form that is different from what you submitted. If I do ask your question you should not give the answer to it any greater weight than you would give to any other testimony. Remember that you are here to judge the facts impartially. You can submit a question if testimony of a witness is unclear on an important point or if, after the lawyers have finished questioning the witness, you think there is still an important question that has not been asked. You should not submit a question just to argue with a witness or a question that might suggest your view or conclusion about the outcome of the case.**

## ***Practice Note***

**Juror Questions Within Trial Courts Discretion; Options.** *The Third Circuit model instructions comment:* Whether to allow jury questions is within the discretion of the trial judge. Option 1 is for judges who want to disallow jury questions explicitly. Option 2 is for judges who want to tell jurors explicitly that they may submit questions to be asked of witnesses. Some judges, however, may not want to give an explicit instruction allowing or disallowing jury questions, but may wish instead to wait and see if jurors inquire about asking questions and then rule on whether to allow questions. If a judge does not give an explicit instruction, but a juror inquires about asking questions, the judge should then decide whether to allow or disallow juror questions and, depending on that decision, should instruct in accordance with the appropriate option given above. The Third Circuit also observes:

**Studies on Juror Questions.** The practice of allowing jurors to submit questions for witnesses has become more prevalent. Field studies indicate that permitting juror questions can aid juror understanding, and that the feared downsides of juror questions do not materialize in practice. Steven D. Penrod & Larry Heuer, *Tweaking Commonsense: Assessing Aids to Jury Decision Making*, 3 PSYCHOL. PUB. POL'Y & L. 259 (1997); Larry Heuer & Steven Penrod, *Juror Notetaking and Question Asking During Trials: A National Field Experiment*, 18 LAW & HUM. BEHAV. 121 (1994). One field study suggests the benefits of permitting juror questions may increase with the factual and legal complexity of the trial. Larry Heuer & Steven Penrod, *Trial Complexity: A Field Investigation of Its Meaning and Its Effects*, 18 LAW & HUM. BEHAV. 29 (1994). Jurors are in favor of permitting juror questions. Neil P. Cohen & Daniel R. Cohen, *Jury Reform in Tennessee*, 34 U. MEM. L. REV. 1 (2003). Judges are generally (though not uniformly) favorable, Leonard B. Sand & Steven Alan Reiss, *A Report on Seven Experiments Conducted by District Court Judges in the Second Circuit*, 60 N.Y.U. L. REV. 423 (1985). Lawyers are split, with one study suggesting that plaintiff/prosecution lawyers favor the practice but defense lawyers are less enthusiastic. Leonard B. Sand & Steven Alan Reiss, *A Report on Seven Experiments Conducted by District Court Judges in the Second Circuit*, 60 N.Y.U. L. REV. 423 (1985); Neil P. Cohen & Daniel R. Cohen, *Jury Reform in Tennessee*, 34 U. MEM. L. REV. 1 (2003).

### **1.11 Direct and Circumstantial Evidence**

There are two types of evidence which are generally presented during a trial direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.



## Sources & Authority

*Thomas v. People*, 2018 V.I. Supreme LEXIS 37 (2018); *Milligan v. People*, 2018 V.I. Supreme LEXIS 27 (2018); *Galloway v. People*, 57 V.I. 693 (V.I. 2012)

### **Practice Note**

As the Court said in *Galloway*, “circumstantial evidence may support a guilty verdict ... so long as that circumstantial evidence is sufficient for a jury to infer the elements of the charged offense.” 57 V.I. at 700.

## **1.12 Circumstantial Evidence**

**It is not necessary that each element of the offense be proved by direct evidence, for an element may also be proved by circumstantial evidence. You may convict the defendant on circumstantial evidence alone, or on circumstantial evidence combined with other evidence, if you believe from all the evidence that the defendant is guilty beyond a reasonable doubt.**

**When the People relies upon circumstantial evidence, the circumstances proved must be consistent with guilt and inconsistent with innocence. It is not sufficient that the circumstances proved create a suspicion of guilt, however strong, or even a probability of guilt.**

**The evidence as a whole must exclude every reasonable theory of innocence.**

### **ADDITIONAL EXAMPLE**

#### **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Evidence may be "direct" or "circumstantial". Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact.

The law makes no distinction between the weight that you should give to either direct or circumstantial evidence, nor does the law say that one is better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

## Sources & Authority

*Gonsalves v. People*, 2019 VI 4; *Thomas v. People*, 2018 V.I. Supreme LEXIS 37 (2018); *Davis v. People*, 2018 V.I. Supreme LEXIS 21 (2018); *Ventura v. People*, 64 V.I. 589 (V.I. 2016);

*Todman v. People*, 59 V.I. 675 (V.I. 2013); *Ostalaza v. People*, 58 V.I. 531 (V.I. 2013); *Phillip v. People*, 58 V.I. 569 (V.I. 2013); *Tyson v. People*, 59 V.I. 391 (V.I. 2013); *Galloway v. People*, 57 V.I. 693, 700 (V.I. 2012); *Alfred v. People*, 56 V.I. 286 (V.I. 2012); *Codrington v. People*, 57 V.I. 176 (V.I. 2012); *McIntosh v. People*, 57 V.I. 669 (V.I. 2012).

### **Practice Note**

In *Gonsalves*, the Supreme Court reiterated the general rule that it is unnecessary for the evidence to be consistent only with the conclusion of guilt because conflicts in evidence are credibility determinations exclusively within the province of the jury. 2019 VI 4 ¶ 36; *Ambrose v. People*, 56 V.I. 99, 106 (V.I. 2012). So long as circumstantial evidence allows for a logical and rational inference based on common sense and everyday experience, it will support a finding of guilt beyond a reasonable doubt as to the relevant element of the crime. *Gonzalves*, 2019 VI 4 ¶ 36; *Galloway*, 57 V.I. at 700; *Alfred*, 56 V.I. at 293; *Codrington*, 57 V.I. at 199-200; *McIntosh*, 57 V.I. at 680. However, the Court has often cautioned that a jury's verdict cannot be founded upon suspicion, speculation, conjecture, or any overly attenuated piling of inferences upon inferences. *Ventura*, 64 V.I. at 601; *Todman*, 59 V.I. at 681. Therefore, a conviction will be affirmed if the elements of the crime could have been found beyond a reasonable doubt by a rational trier of fact. *Gonsalves*, 2019 VI 4 ¶; *Charles v. People*, 60 V.I. 823, 831-32 (V.I. 2014).

### **1.13 Statements of Counsel**

**You must not consider as evidence any statement of counsel made during the trial. Statements of counsel do not constitute evidence, rather counsel is articulating the position and contention of his client. This rule applies to the opening statement of counsel and the closing argument.**

### **1.15 Objections**

**Attorneys are officers of the court. Attorneys have the absolute right and duty to bring matters to the attention of the court by way of objection. Do not inferentially, or otherwise, become upset or disturbed by counsel by virtue of an objection. Our trial procedure includes the objection process as a means of control of evidence, i.e., letting in proper evidence and keeping out improper evidence. Counsel, by objecting, are simply performing their role in the trial of the case.**

**Once the court makes a ruling on an objection, the jury is bound by that ruling. If the objection is sustained, the question is improper. If the objection is overruled, the question is proper. In that regard, the jury must not, under any circumstances, derive any inference from any ruling made by the court on objections as to any opinion the court may have on the case. The judge does not have an opinion on the evidence and is not entitled to an opinion under the law. The judge is performing his role in the trial of the case.**

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection.

### **1.17 Bench (Side-Bar) Conferences** [Third Circuit model]

During the trial it may be necessary for me to talk with the lawyers out of your hearing. That is called a bench or side-bar conference. If that happens, please be patient. We also ask that you advise me, through my courtroom deputy, if you are able to hear any of the bench or side-bar conferences, because the purpose is to hold these discussions outside the hearing of the jury, for important reasons.

I know you may be curious about what we are discussing. We are not trying to keep important information from you. These conferences are necessary for me to discuss with the lawyers objections to evidence and to be sure that evidence is presented to you correctly under the rules of evidence. We will, of course, do what we can to keep the number and length of these conferences to a minimum. If I think the conference will be long, I will call a recess.

I may not always grant a lawyer's request for a conference. Do not consider my granting or denying a request for a conference as suggesting my opinion of the case or of what your verdict should be.

### **1.19 Stipulations of Fact**

When [lawyers; parties] agree that certain facts are true, that is called a stipulation of fact. Stipulations are binding upon those who make them. If [counsel for the parties; the parties] have stipulated to any fact, or any fact has been admitted by [counsel; any party], you will regard that fact as being conclusively proved as to the [party; parties] making the stipulation or admission. You must accept stipulated facts as having been proven. However, the significance of these facts, as with all facts, is for you to decide. In this case, the stipulated fact[s] that you must accept as true [is; are] *<state stipulations>*.

### **1.21 Stipulated Testimony** [Third Circuit model]

The parties have agreed what (name of witness)'s testimony would be if called as a witness. You should consider that testimony in the same way as if it had been given here in court by the witness.

### **1.23 Rejected or Stricken Evidence**

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken by the court. Such matter is to be treated as though you had never known of it. You are to consider only the competent evidence before

you. If there was any testimony ordered stricken from the record during this trial, you must disregard that testimony. You are to consider only the testimony presented from the witness stand, any exhibits which have been made a part of the record, and any stipulations of counsel.

### Sources & Authority

*Davis v. People*, 2018 V.I. Supreme LEXIS 23 (2018); *Monelle v. People*, 63 V.I. 757 (2015)

#### **1.25 Juror Conduct Generally** [Third Circuit model]

Here are some important rules about your conduct as jurors:

(1) Keep an open mind. Do not make up your mind about the verdict until you have heard all of the evidence, and I have given final instructions about the law at the end of the trial, and you have discussed the case with your fellow jurors during your deliberations.

(2) Do not discuss the case among yourselves until the end of the trial when you retire to the jury room to deliberate. You need to allow each juror the opportunity to keep an open mind throughout the entire trial. During trial you may talk with your fellow jurors about anything else of a personal nature or of common interest.

(3) During the trial you should not speak to any of the parties, lawyers, or witnesses involved in this case, not even to pass the time of day. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator, or the like, remember it is because they are not supposed to talk or visit with you, either.

(4) Do not talk with anyone else or listen to others talk about this case until the trial has ended and you have been discharged as jurors. It is important not only that you do justice in this case, but that you give the appearance of justice. If anyone should try to talk to you about the case during the trial, please report that to me, through my courtroom deputy, immediately. Do not discuss this situation with any other juror.

(5) Do not discuss the case with anyone outside the courtroom or at home, including your family and friends. You may tell your family or friends that you have been selected as a juror in a case and you may tell them how long the trial is expected to last. However, you should also tell them that the judge instructed you not to talk any more about the case and that they should not talk to you about it. The reason for this is that sometimes someone else's thoughts can influence you. Your thinking should be influenced only by what you learn in the courtroom.

(6) Until the trial is over and your verdict is announced, do not watch or listen to any television or radio news programs or reports about the case, or read any news or internet stories or articles about the case, or about anyone involved with it.<sup>1</sup>

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<sup>1</sup> In highly publicized cases, instead of including this paragraph as part of the overall instruction on juror conduct generally, the judge may want to add an additional, separate instruction in this regard.

### **1.27 Jurors Communicating or Doing Electronic Research**

To preserve the integrity of the jury system, you as finders of facts must decide this case solely upon evidence presented in this courtroom. This means that during the trial, you must not conduct any independent research about this case, the matters in the case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials; search the internet, websites, or blogs; or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom--to include media of any sort or online legal research.

Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end. I hope that for all of you this case is interesting and noteworthy. I know that many of you use cell phones, Blackberries, the internet, and other tools of technology. You also must not talk to anyone about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter; through any blog or website; through any internet chat room; or by way of any other social networking websites, including Facebook, My Space, LinkedIn, and YouTube.

### **1.29 Indictment by Grand Jury**

The fact that the defendant has been indicted by a grand jury is not evidence against him, and you should not consider it.

### **1.31 Exhibits**

Upon your request, any exhibits introduced into evidence may be sent to the jury room [or otherwise made available] to be considered in your deliberations.

### **1.35 Credibility of Witnesses**

*\* Option 1:*

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having

observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

*\* Option 2 -Third Circuit model:*

In deciding what the facts are, you must decide what testimony you believe and what testimony you do not believe. You are the sole judges of the credibility of the witnesses. Credibility refers to whether a witness is worthy of belief: Is the witness truthful? Is the witness testimony accurate? You may believe everything a witness says, or only part of it, or none of it.

You may decide whether to believe a witness based on his or her behavior and manner of testifying, the explanations the witness gives, and all the other evidence in the case, just as you would in any important matter where you are trying to decide if a person is truthful, straightforward, and accurate in his or her recollection. In deciding the question of credibility, remember to use your common sense, your good judgment, and your experience.

In deciding what to believe, you may consider a number of factors:

- (1) The opportunity and ability of the witness to see or hear or know the things about which the witness testifies;
- (2) The quality of the witness knowledge, understanding, and memory;
- (3) The witness appearance, behavior, and manner while testifying;
- (4) Whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice;
- (5) Any relation the witness may have with a party in the case and any effect that the verdict may have on the witness;
- (6) Whether the witness said or wrote anything before trial that is different from the witness testimony in court;

*\* Option 1 for factor (7):*

(7) Whether the witness testimony is consistent or inconsistent with other evidence that you believe]; and

*\* Option 2 for factor (7):*

(7) How believable the witness testimony is when considered with other evidence that you believe; and

**(8) Any other factors that bear on whether the witness should be believed. Inconsistencies or discrepancies in a witness testimony or between the testimony of different witnesses may or may not cause you to disbelieve that witness testimony. Two or more persons witnessing an event may simply see or hear it differently. Mistaken recollection, like failure to recall, is a common human experience. In weighing the effect of an inconsistency, you should consider whether it is about a matter of importance or an insignificant detail. You should also consider whether the inconsistency is innocent or intentional.**

**You are not required to accept testimony even if the testimony is not contradicted and the witness is not impeached. You may decide that the testimony is not worthy of belief because of the witness bearing and demeanor, or because of the inherent improbability of the testimony, or for other reasons that are sufficient to you.**

**After you make your own judgment about the believability of a witness, you can then attach to that witness testimony the importance or weight that you think it deserves.**

**The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testify. What is more important than numbers is how believable you find the witnesses to be.**

#### **ADDITIONAL EXAMPLE**

##### **CREDIBILITY OF WITNESSES**

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. In deciding whether you believe any witness, I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth?

have a personal interest in the outcome of the case or a particular reason not to tell the truth?

have the opportunity and ability to observe accurately the things he or she testified about?

appear to understand the questions clearly and answer them directly? seem to have a good memory?

say or do something, or fail to say or do something, at an earlier time that was different from the testimony the witness gave at trial?

or give testimony that differed from other evidence that you believe?

Of course, a simple mistake by a witness does not necessarily mean that the witness is not telling the truth as he or she remembers it, since people sometimes hear or see things differently and sometimes forget things. So, you need to consider whether a contradiction is an innocent lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

### **1.37 Disregarding Remainder of False Witness’s Testimony**

If you believe that a witness knowingly testified falsely concerning any important matter, you may distrust the witness's testimony concerning other matters. You may reject all of the testimony or you may accept such part of the testimony that you believe are true and give it such weight as you think it deserves.

#### **ADDITIONAL EXAMPLE**

##### **KNOWING FALSEHOOD BY WITNESS**

If a person is shown to have knowingly testified falsely concerning an important matter, you have the right to distrust the testimony of that witness concerning any other matter. You may accept or reject some or all of the testimony of the witness and give it such weight as you may think it deserves.

#### **Sources & Authority**

*Ostalaza v. People*, 58 V.I. 531 (V.I. 2013)

#### **Practice Note**

In *Ostalaza* the Supreme Court reviewed this instruction (the trial court's actual instruction to the jury stated that they “may believe everything a witness says, or part of it, or none of it” ) from the Third Circuit Model Jury Instructions. The Court observed that this Instruction “correctly stated the law as to witness credibility.” 58 V.I. at 556 (suggesting in passing that such an instruction may be unnecessary “where the court gives a general instruction on witness credibility”).

### **1.39 Definition of Proximate Cause**

A proximate cause of an accident, injury, or damage is a cause that, in natural and continuous sequence, produces the accident, injury, or damage. It is a cause without which the accident, injury, or damage would not have occurred.

### **1.41 Inference of Intention**

You may infer that every person intends the natural and probable consequences of (his; her) acts.

#### **Sources & Authority**

*Connecticut v. Johnson*, 460 U.S. 73, 84, 90 (1983); *Sandstrom v. Montana*, 442 U.S. 510, 512, 523–24 (1979).



### ***Practice Note***

In *Sandstrom*, the United States Supreme Court held that where intent is an element of the crime charged, a jury instruction that “the law presumes that a person intends the ordinary consequences of his voluntary acts” violates the Fourteenth Amendment’s requirement that the state prove every element of a criminal offense beyond a reasonable doubt. In *Johnson*, a plurality opinion interpreted *Sandstrom* as making it clear that a conclusive presumption on the issue of intent is the functional equivalent of a directed verdict on that issue. Only four of the Justices, however, favored adoption of a rule of automatic reversal for *Sandstrom* error, whether harmless or not, in all cases.

#### **1.43 Separate Consideration - Single Defendant Charged with Multiple Offenses [Third Circuit model]**

*<Name of defendant>* is charged with [more than one offense; several offenses]. Each offense is charged in a separate count of the indictment.

The number of offenses charged is not evidence of guilt, and this should not influence your decision in any way. You must separately consider the evidence that relates to each offense, and you must return a separate verdict for each offense. For each offense charged, you must decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of that particular offense.

Your decision on one offense, whether guilty or not guilty, should not influence your decision on any of the other offenses charged. Each offense should be considered separately.

#### **ADDITIONAL EXAMPLE**

##### **CONSIDER EACH COUNT SEPARATELY**

A separate crime is charged in each count of the Amended Information. You should consider each charge, and the evidence pertaining to it, separately. The fact that you may find the defendant "guilty" or "not guilty" as to one of the counts should not control your verdict as to any other count.

##### **CONSIDER ONLY CRIMES CHARGED**

You are here to decide only whether the People have proven beyond a reasonable doubt that the defendant is guilty of the crimes with which he is charged. The defendant is not on trial for any act, conduct, or offense not alleged in the Amended Information. Nor are you concerned with the guilt or innocence of any person not on trial in this case.

### **1.45 Separate Consideration - Multiple Defendants Charged with a Single Offense**

The defendants are all charged with one offense. In our system of justice, however, guilt or innocence is personal and individual. You must separately consider the evidence against each defendant, and you must return a separate verdict for each defendant. For each defendant, you must decide whether the government has proved that particular defendant guilty beyond a reasonable doubt.

Your decision on one defendant, whether guilty or not guilty, should not influence your decision on any of the other defendants. Each defendant should be considered individually.

### **1.47 Separate Consideration - Multiple Defendants Charged with the Same Offenses**

The defendants are all charged with [more than one offense; several offenses]. Each offense is charged in a separate count of the indictment. The number of offenses charged is not evidence of guilt, and this should not influence your decision in any way. Also, in our system of justice, guilt or innocence is personal and individual. You must separately consider the evidence against each defendant on each offense charged, and you must return a separate verdict for each defendant on each offense. For each defendant and offense, you must decide whether the government has proved beyond a reasonable doubt that the particular defendant is guilty of the particular offense.

Your decision on any one defendant or any one offense, whether guilty or not guilty, should not influence your decision on any of the other defendants or offenses. Each defendant and each offense should be considered separately.

### **1.49 Separate Consideration - Multiple Defendants Charged with Different Offenses**

The defendants are charged with different offenses. I will explain to you in more detail shortly which defendants are charged with which offenses. Before I do that, however, I want to emphasize several things.

The number of offenses charged is not evidence of guilt, and this should not influence your decision in any way. Also, in our system of justice, guilt or innocence is personal and individual. You must separately consider the evidence against each defendant on each offense charged, and you must return a separate verdict for each

defendant for each offense. For each defendant and each offense, you must decide whether the government has proved beyond a reasonable doubt that a particular defendant is guilty of a particular offense.

Your decision on any one defendant or any one offense, whether guilty or not guilty, should not influence your decision on any of the other defendants or offenses. Each defendant and each offense should be considered separately.

### **1.51 Pro Se Defendant** [Third Circuit model]

<Name of defendant> has decided to represent (himself; herself) in this trial and not to use the services of a lawyer. (He; She) has a constitutional right to do that. (His; Her) decision has no bearing on whether (he; she) is guilty or not guilty, and it must not affect your consideration of the case.

Because <name of defendant> has decided to act as (his; her) own lawyer, you will hear (him; her) speak at various times during the trial. (He; She) may make an opening statement and closing argument. (He; She) may ask questions of witnesses, make objections, and argue to the court. I want to remind you that when <name of defendant> speaks in these parts of the trial (he; she) is acting as a lawyer in the case, and (his; her) words are not evidence. The only evidence in this case comes from witnesses who testify under oath on the witness stand and from exhibits that are admitted.

### **Practice Note**

**Assuring Valid Counsel Waiver.** The Third Circuit comments note that this instruction should be given when a defendant exercises the constitutional right under *Faretta v. California*, 422 U.S. 806 (1975), to waive the Sixth Amendment right to assistance of counsel and proceed pro se. In order to assure that the waiver is valid, the court should engage in a colloquy with the defendant following the outline set forth in *United States v. Peppers*, 302 F.3d 120, 136-37 (3d Cir. 2002) (based in part on 1.02 of the *Benchbook for U.S. District Court Judges* (4th ed. 2000)). See also *Iowa v. Tovar*, 541 U.S. 77, 88-91 (2004) (emphasizing that there is no script for the colloquy and that the requirements depend on the particular circumstances of the case and holding that the trial court was not required to inform the defendant that an attorney could provide an independent opinion or that without an attorney the defendant risked overlooking a defense).

The instruction informs the jury of the defendant's choice to proceed pro se. In addition, it directs the jury to treat the words spoken by the defendant while functioning as counsel like those of any other lawyer and not to treat them as evidence in the case.

**Standby Counsel.** The court may appoint standby counsel to assist the pro se defendant. A pro se defendant is not constitutionally entitled to standby counsel or to hybrid representation, in which the defendant shares the role of counsel with standby counsel. See *McKaskle v.*

*Wiggins*, 465 U.S. 168 (1984). Nevertheless, the trial court has discretion to permit either and may even appoint standby counsel over the defendants objection. *See id. at* 182-83; *Faretta*, 422 U.S. at 834 n.46. In *McKaskle*, the Court held that the pro se defendant is constitutionally entitled to actual control of the case and the appearance to the jury of actual control; standby counsel must interfere with neither aspect of the right to self-representation. 465 U.S. at 187. If the court appoints standby counsel, the court may wish to inform the jury of standby counsels role in the case.

### **1.53 Corporate Criminal Responsibility** [Third Circuit model]

The defendant, *<name of corporation>*, is a corporation. A corporation is a legal entity that may act only through individuals who are called its agents. The agents of a corporation are its officers, directors, employees, and other persons who are authorized by the corporation to act for it.

You may find a corporate defendant guilty or not guilty of the offense[s] charged under the same instructions that apply to an individual defendant. You must give to a corporate defendant the same impartial consideration of the evidence that you would give to any individual.

The legal responsibility of a corporation, if any, is based on the conduct of its agents. To find the defendant *<name of corporation>* guilty of the offense[s] charged, you will need to find that the government proved beyond a reasonable doubt that each of the elements of [the; each] offense was committed by an officer, director, employee, or some other agent of *<name of corporation>* and that this person committed those elements within the course and scope of (his; her) employment or agency and that this person committed those elements with the intent to benefit *<name of corporation>*.

This is only a preliminary outline of corporate criminal responsibility. At the end of the trial, I will give you final instructions on corporate criminal responsibility and on other matters of law. Those final instructions will be more detailed; they will guide you in reaching your verdict in this case.

### **1.75 Verdict—“Allen Charge”**

As you have been told, your verdict must be unanimous. If you can possibly reach a verdict, it is your duty to do so. You should listen to the views and opinions of your fellow jurors with fairness and candor and you should give consideration to what they say. However, you must decide the case for yourself and you should reach an agreement only if it can be done without sacrificing your individual judgment. During the course of your deliberations, each of you, whether in the majority or the minority, should not hesitate to re-examine your own views and change your opinion if you are convinced it was wrong. No juror, however, should give up his honest opinion as to the evidence solely because of the opinion of his fellow jurors or for the mere purpose of returning a verdict.

**If you can reach a decision without surrendering your conscientious opinion, it is your duty to do so.**

**Please return to the jury room and give the matter your further consideration.  
Thank you.**

### **Sources & Authority**

*Benjamin v. People*, 59 V.I. 572 (2013); *Allen v. United States*, 164 U.S. 492, 501–02 (1896).

#### **ADDITIONAL EXAMPLE**

##### **DUTY TO DELIBERATE**

Members of the jury, I have received an unsigned question from you reading:

"If we cannot agree on 1 count, is it possible to still vote on the others? Or are all the charges voided?"

First, I want to remind you of my earlier instruction indicating that any question from the jury should be signed by the foreperson or one or more of the other jurors.

Also, I advise you that again it is your duty as jurors to consult with one another and to deliberate with a view to reaching a unanimous agreement on all of the counts if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but you should do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if you are convinced it is wrong. But do not surrender your honest belief about the weight and effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

The object of the jury system is to secure a unanimous agreement through discussion among the jurors themselves by comparing their views of the evidence. Each juror should listen with deference to the arguments of the other jurors. No juror should go to the jury room with a blind determination that the verdict should represent his or her opinion of the case at that moment or that he or she should close his or her ears to the arguments of other jurors.

In order for you to return a verdict on a particular count of the Information, your verdict must be unanimous, that is, each of you must agree on it. You may return a verdict on one of the counts only if all twelve of you sign the same verdict form finding a defendant either "Not Guilty" or "Guilty" for that particular count.

In response to your specific question, you may conduct your deliberations as you choose. You may consider the counts in any order you wish, so long as you consider all of them. You do not have to reach a unanimous agreement on any particular charge or on all of the charges before returning a verdict on some of the charges, if that is what you decide you must do. If you reach a unanimous agreement on some of the charges, you may continue deliberating on the other charges or inform the Court that you cannot reach a unanimous verdict on the remaining charges. You do not have to do this, but you can if you wish. If you do return a partial verdict, deciding some but not all of the charges, that verdict will be final as to the charges you decide.

If you are not able to reach a unanimous verdict of either "Guilty" or "Not Guilty" on even one of the counts after exhausting your reasonable efforts to reach an agreement, you should advise the Court that you are unable to return a verdict on any count. If you cannot agree upon a verdict on even one of the counts the case must be tried again. There is no reason to believe that either side can present the case in a better way at a later date than has been done in this trial, nor that more or clearer evidence could be produced. Any future jury must be selected in the same manner as you were chosen, and there is also no reason to believe that a new trial would be presented to twelve people more conscientious, more impartial, or more competent to decide it than yourselves.

Please understand that by giving this instruction to you I am not attempting to coerce you into returning a verdict. I am going to ask you to return to the jury room and deliberate further. I realize that you are having difficulty reaching a unanimous agreement. But, after further instructions and further discussion, jurors are often able to work out their differences and agree to a unanimous verdict on all of the counts. Thank you.

### **1.81 Number of Witnesses**

**Your decision should not be determined by the number of witnesses testifying for or against a party, but should be based on all the facts and circumstances in evidence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.**

**The testimony of a single witness, if believable, is sufficient to prove any fact if it convinces you, after consideration of all the evidence, that the fact has been proven, even if other witnesses have testified to the contrary.**

**The testimony of a single witness, if believable, is also sufficient to raise a reasonable doubt if it convinces you, after consideration of all the evidence, that an**

essential element of a charge against the defendant has not been proven beyond a reasonable doubt, even if other witnesses have testified to the contrary.

### **1.83 Summary of the Amended Information**

I will not read the amended information to you because you will have a copy of it in the jury room. In summary, Count *<number of count>* charges the defendant with *<name of crime charged in pertinent count of information>*; Count *<number of count>* charges the defendant with *<name of crime charged in pertinent count of information>*.<sup>2</sup>

AND, Count *<number of count>* charges the defendant with *<name of crime charged in pertinent count of information>*.

### **1.85 Proof of the Charges**

After consideration of all of the evidence if you find that the People have proven each and every element of a crime with which the defendant is charged beyond a reasonable doubt, you should find the defendant guilty of that charge. After consideration of all of the evidence if you find that the People have not proven one or more elements of a crime with which the defendant is charged beyond a reasonable doubt, you should find the defendant not guilty of that charge.

### **1.87 Proof of Knowledge or Intent**

The intent or knowledge of a person at any given time may not ordinarily be proven directly, but must generally be proven by circumstantial evidence, because there is no way of directly observing the human mind work. In determining what a person knew or intended at a particular time, you may consider any statements made or not made, or any acts done or not done, by that person and all the other facts and circumstances in evidence.

You may infer, but you are not required to infer, that a person intends the natural and probable consequences of acts he knowingly does or knowingly fails to do.

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<sup>2</sup> The same language may be repeated and modified as necessary to accommodate additional counts in the amended information, prior to the last count.

### **1.89 Motive**

Proof of motive is not a necessary element of any crime with which the defendant is charged. Proof of motive does not establish guilt, nor does lack of proof of motive establish that a defendant is innocent.

If the guilt of a defendant is proven beyond a reasonable doubt, it does not matter what the motive for the crime was, or whether any motive has been shown, but the presence or absence of motive is a circumstance that you may consider as bearing on the intent of a defendant. The People do not have to prove motive.

### **1.91 Questions/Comments By the Court**

You are instructed that if I have asked any questions of any of the witnesses, made comments to the attorneys, or said or done anything during the trial, or while instructing you, because of which it seems to you that I am inclined to favor the case of either the People or the defendant, you must remove any such impression from your minds and not be influenced by it, because I did not intend to give that impression. What the verdict shall be is the exclusive duty and responsibility of the jury.

### **1.93 Punishment and Sympathy**

The punishment provided by law for the offenses charged in the Amended Information is a matter exclusively for the Court to decide and should never be considered by the jury in any way in arriving at an impartial verdict as to the offenses charged.

You have been chosen and sworn as jurors only to try the issues of fact presented by the parties. Under no circumstances should your deliberations be influenced by any bias, passion, prejudice, sympathy, pity, or public opinion. In every respect, your judgment should be considered, deliberate, objective, and based on facts and inferences reasonably and logically supported by the evidence. Also, speculation and conjecture must play no role in the performance of your duty. You must carefully and impartially consider all the evidence, follow the law as I instruct you, and reach a just verdict, regardless of the consequences.



## **1.95 Deliberations and Unanimity**

I come now to the last part of the instructions, the rules for your deliberations. Upon retiring to the jury room, you must first elect one of your members to act as your foreperson to preside over your deliberations and be your spokesperson in Court. The opinion or vote of the foreperson carries no greater weight than that of any other juror. Your verdict must represent the collective judgment of the jury, and in order for you to return a verdict each juror must agree to it. In other words, your verdict must be unanimous. During the trial you may have formed impressions as to how it should be decided. Do not allow those impressions to prevent you from fairly and frankly discussing this case with any of your fellow jurors who may have a different point of view. It is your duty to give careful attention to the views of your fellow jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself. Do not hesitate to reexamine and change your opinion if you are convinced it is wrong, 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. Remember at all times that you are not partisans. You are judges--judges of the facts. Your sole interest is to seek the truth from the evidence received during the trial.

## **1.97 Communication With the Court**

A copy of these instructions will be available in the jury room for you to consult if you find it necessary, and that should avoid most, if not all, questions during deliberations. But, if it becomes necessary to communicate with me during your deliberations, you may send a note, signed by your foreperson or by one or more other members of the jury, through the marshal. No member of the jury should ever attempt to communicate with me by any means other than a signed writing, and I will never communicate with any member of the jury other than in writing or orally here in court. Everyone, including the marshals, is forbidden to communicate in any way or manner with any member of the jury concerning the evidence, your opinions, or the deliberations.

Bear in mind also that you are never to reveal to any person, not even to me, how the jury stands, either by the number of votes for or against conviction, or otherwise on the question of whether or not the People have sustained the burden of proof, until after you have reached a unanimous verdict or have been discharged.

## **1.99 Forms of Verdict**

To assist you in communicating your verdict, forms of verdict have been prepared for you. There are two forms for each offense charged in the Amended Information, one for a "Not Guilty" verdict and one for a "Guilty" verdict. When you have made a unanimous determination of the guilt or innocence of the defendant as to a Count of the Amended Information, you will select and complete the appropriate form indicating your verdict of either "Guilty" or "Not Guilty." Your foreperson will date the verdict form, and each of you will sign the appropriate form for each Count. Then, advise the marshal that you have reached a verdict, and you will then be returned to the courtroom. Your foreperson must bring the verdict forms with him or her.

I will ask if you have reached a verdict and, if so, the foreperson should stand and either announce the jury's verdict as to each Count, one at a time, by reading the completed form of verdict you have signed, or ask that the Court announce the verdict. The foreperson should then hand up the verdict forms for the Court's inspection. Upon request of either the People or the defendant, the Clerk will poll each juror.

After I speak with the attorneys one last time I will permit you to retire and consider your verdict. Thank you.

## **Chapter 2. PARTICULAR WITNESSES & FORMS OF PROOF**

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## **2.01 Evidence Admitted for a Limited Purpose**

In certain instances evidence may be admitted only for a particular purpose and not generally for all purposes.

[You heard evidence that <name of declarant> told the defendant that <name of victim> was looking for her and had a gun. That evidence was admitted only to explain defendant's state of mind when she later encountered <name of victim>, and you may consider that evidence only in determining defendant's state of mind and the reasonableness of defendant's actions. You may not, however, use <name of declarant>'s statement as evidence that <name of victim> actually was looking for defendant or that <name of victim> actually had a gun.]

**For the limited purpose for which this evidence has been received you may give it such weight as you feel it deserves. You may not, however, use this evidence for any other purpose not specifically mentioned.**

### **Practice Note**

If evidence is admitted for a limited purpose and one of the parties requests a limiting instruction, the court should inform the jury of the limited purpose of the evidence at the time it is introduced. This instruction provides a general template that can be adapted to the specific situation; the bracketed language is an example of a description of evidence and its limited role in the case.

## **2.03 Evidence Admitted Against Only One Defendant**

**You** [are about to hear; just heard] <describe testimony or exhibit>. **You can consider** [this testimony; this exhibit] **only in the case against** <name of defendant>. **You must not consider that evidence in the case against the other defendant[s]. Each defendant is entitled to have** (his; her) case decided just on the evidence which applies to (his; her).

## **2.07 Prior Inconsistent Statement of Witness**

**If you believe from the evidence that a witness** [other than the defendant] **previously made a statement inconsistent with his testimony at this trial, the only purpose for which that statement may be considered by you is for its bearing on the witness's credibility. It is not evidence that what the witness previously said is true.**

## Practice Note

**ALERT:** Under V.I. Rule of Evidence 801(d)(1)(A), some prior inconsistent statements are admissible for their truth (as non-hearsay) and not merely for contradiction and impeachment purposes. The Rule states:

A statement that meets the following conditions is not hearsay:

(1) **A Declarant-Witness's Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

Therefore, if the prior statement falls within Rule 801(d)(1)(A), this Instruction should not be given. A key characteristic of statements falling within Rule 801(d)(1)(A) is that they were made under oath. However, even a sworn statement does not fall within the rule and may be used only to impeach if it was not given at a *proceeding*.

### 2.09 Inconsistent Statement of Defendant

If you believe from the evidence that the defendant previously made a statement inconsistent with his testimony at this trial, that previous statement may be considered by you as proof that what the defendant previously said is true.

### 2.11 Statements of the Defendant

The statements presented to you as having been made by the defendant are submitted for your consideration along with all the other evidence. The weight, value, credibility and reliability of those statements are questions for your determination.

### 2.13 Impeachment of Witness - Prior Untruthful Acts (V.I. R.E. 608(b))

\* Option 1: To be given if the witness admits having engaged in or having committed the bad act:

You have heard evidence that *<name of person>*, a witness, committed *<describe bad act inquired about during cross-examination>*. You may consider this evidence, along with other pertinent evidence, only in deciding whether to believe *<name of person>* and how much weight to give (his; her) testimony.

\* Option 2: To be given if the witness denies having engaged in or having committed the bad act:

You heard *<name of lawyer>* ask *<name of witness>* whether (he; she) committed *<describe bad act inquired about during cross-examination>*, and (he; she) denied it. I

**remind you that questions by the lawyers are not evidence. It is the answer of the witness that provides evidence. There is therefore no evidence that <name of witness> committed <describe bad act inquired about during cross-examination>.**

### ***Practice Note***

Rule 608(b) of the V.I. Rules of Evidence provides:

**(b) Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

- (1) the witness; or
- (2) another witness whose character the witness being cross-examined has testified about.

Rule 608(b) governs only when the conduct that is the subject of the cross-examination or extrinsic evidence is relevant only to establish the witness's untruthful character. *If the evidence is offered to establish something else*, such as bias, incompetency, or compromised ability to perceive or recall the events, Rule 608 does not govern. Instead, the court should evaluate the propriety of questions and the admissibility of extrinsic evidence under Rules 402 and 403. *United States v. Abel*, 469 U.S. 45 (1984).

If the court permits cross-examination concerning prior conduct that suggests untruthful character under Rule 608(b), the court should instruct the jury concerning the cross-examination. The appropriate instruction depends on whether the witness admits or denies the prior conduct in response to the questions asked on cross-examination. ***Alternative 1*** should be given if the witness admits the conduct. This instruction merely directs the jury to consider the prior acts in assessing the witness's credibility. However, if the witness denies the conduct, the court should give ***Alternative 2***, directing the jury to draw no inference from the asking of the question. Rule 608(b) precludes the introduction of extrinsic evidence to establish the prior act, so the witness's denial concludes the inquiry

Rule 608(b) permits inquiry only concerning prior acts that are probative of untruthful conduct. To fall within the rule, the acts will normally need to involve dishonesty or false statement, similar to the concepts employed in Rule 609(a)(2).

The inquiry under Rule 608(b) should focus on the actual acts that suggested untruthfulness and not any third party actions or consequences, such as suspension from a job, that resulted from those acts involving falsity.

The court may preclude inquiry concerning prior acts if they are remote in time.

In addition, cross-examination under Rule 608(b) may be limited by the Fifth Amendment. Rule 608(b) provides that no witness, including the accused, waives the Fifth Amendment privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

## **2.15 Impeachment by Prior Conviction**

**You heard evidence that <name of person>, a witness, was previously convicted of a [crime punishable by more than one year in jail; crime involving dishonesty or false statement]. You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe <name of person> and how much weight to give to (his; her) testimony.**

### ***Practice Note***

This instruction should be given as part of the final charge when a witness has been impeached under Rule 609 of the V.I. Rules of Evidence with evidence of a prior conviction. This instruction merely directs the jurors to consider the prior conviction in assessing credibility.

Rule 609(a), which governs the admissibility of prior convictions to impeach, provides:

The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

- (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
  - (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
  - (B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
- (2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving -- or the witness's admitting -- a dishonest act or false statement.

Rule 609(a)(1) permits impeachment of witnesses other than the accused by convictions of crimes punishable by death or imprisonment greater than one year subject only to balancing under Rule 403. *See Government of the Virgin Islands v. Bedford*, 671 F.2d 758 (3d Cir. 1982) (discussing application of Rule 609(a)(1)).

Rule 609(a)(2) permits impeachment by conviction of crimes involving false statement or dishonesty; if the crime falls within (a)(2), the trial court must admit the prior conviction. Rule 609(a)(2) is interpreted narrowly and does not include crimes such as theft that do not bear on the witness' propensity to testify truthfully.

As phrased in the V.I. Rules of Evidence, the rule precludes inquiry into the manner in which a crime was committed to establish that it was a crime of dishonesty or false statement. Instead, the nature of the crime must be readily determined.

If more than ten years has passed since the date of conviction or release, the prior conviction is not admissible unless the proponent gives written notice and "its probative value,

supported by specific facts and circumstances, substantially outweighs its prejudicial effect.”  
V.I. R.E. 609(b).

#### **ADDITIONAL EXAMPLE**

##### **PRIOR CONVICTION OF DEFENDANT**

You have heard evidence that the defendant has previously been convicted of a felony criminal offense. That evidence may be considered by you only for the purpose of determining the effect of the prior conviction on the credibility of the defendant's trial testimony and for no other purpose.

For the limited purpose for which the evidence has been received, you may give it such weight as you find it deserves. But, you may not use that evidence for any purpose other than to help you decide whether to believe the defendant's version of the events and how much weight to give his trial testimony. That means you may not consider that evidence as suggesting that defendant has a bad character or that he has a propensity to commit crimes of any kind.

##### **PRIOR CONVICTION OF WITNESS**

You have heard evidence that a witness has previously been convicted of a crime involving dishonesty and false statements. That evidence may be considered by you only for the purpose of determining the effect of the prior conviction on the credibility of the witness and for no other purpose. You may consider the conviction only to help you decide whether to believe the witness' version of the events and how much weight to give his or her trial testimony.

### **2.17 Where Prior Conviction of Similar Crime Is an Element**

**Evidence that the defendant was previously convicted of a similar offense is not proof that** (he; she) [distributed heroin; drove while under the influence of alcohol;<describe offense that defendant is currently accused of committing>] **on** <date of current offense>, **and such evidence may not be considered by you in determining whether the defendant** [distributed heroin; drove while under the influence of alcohol; <describe offense that defendant is currently accused of committing>] **on** <date of current offense>.

#### ***Practice Note***

The language in the brackets contains examples of offenses where a previous conviction is an element of the offense. This language must be modified to fit the offense for which the defendant is being tried.



## **2.19 Impeachment of Defendant's Character Witness**

*\*Option 1 - If a defendant's character witness testified to reputation:*

**You heard <name of witness> testify about the defendant's reputation for <describe character trait covered by witness' testimony>. On cross-examination of <name of witness>, the prosecutor asked (him; her) some questions about whether (he; she) had heard that <describe the subject of the cross-examination on the character trait, e.g., defendant was convicted of fraud on an earlier occasion>. The prosecutor was allowed to ask these questions only to test whether <name of witness> was familiar with the reputation of the defendant in the community. This is not evidence that the acts described in these questions actually occurred.**

**You may not use the information developed by the prosecutor on this subject for any other purpose. Specifically, you may not use this information to conclude that the defendant committed the [act; acts] charged in the indictment or as proof that the defendant has a bad character or any propensity to commit crimes.**

*\*Option 2 - If character witness testified to opinion as to character:*

**You heard <name of witness> testify about the defendant's character for <describe character trait covered by testimony>. On cross-examination of <name of witness>, the prosecutor asked (him; her) some questions about whether (he; she) knew that <describe the subject of the cross-examination on the character trait, e.g., defendant was convicted of fraud on an earlier occasion>. The prosecutor was allowed to ask these questions only to test whether <name of witness> had a good basis for (his; her) opinion of the defendant's character. This is not evidence that the acts described in these questions actually occurred.**

**You may not use the information developed by the prosecutor on this subject for any other purpose. Specifically, you may not use this information to conclude that the defendant committed the [act; acts] charged in the indictment or as proof that the defendant has a bad character or any propensity to commit crimes.**

### ***Practice Note***

This instruction should be given to the jury at the time of the cross-examination when the prosecutor is permitted to cross-examine the defendant's character witness concerning prior instances of the defendant's conduct.

Under Rule 404(a) of the V.I. Rules of Evidence, a defendant is permitted to introduce evidence of good character to support the inference that the defendant did not commit the offense charged. Rule 405(a) then permits the prosecutor to cross-examine the defendant's character witness concerning specific instances of the defendant's conduct relating to the character trait at issue. The rules thus continue the common law practice discussed in *Michelson v. United States*,

335 U.S. 469 (1948), but with one difference: opinion evidence, which was prohibited at common law, is allowed under the rules. Under the V.I. Rules of Evidence, the character witness may testify to either reputation or opinion.

A reputation witness testifies to the defendant's reputation for a specific trait in a specific community, based on conversations with others concerning the defendant. . Cross-examination of a reputation witness should focus on what the witness has heard and may inquire about conduct, and even about charges, which may have come to the attention of the relevant community. An opinion witness testifies to the witness's own opinion of the defendant's character for a specific trait based on that witness's experience with the defendant. Cross-examination of an opinion witness should focus on what the witness knows and will test the accuracy of and basis for the favorable opinion.

The cross-examination permitted by Rule 405(a) often focuses on prior bad conduct by the defendant and therefore injects a risk of unfair prejudice. The Supreme Court noted in *Michelson*:

The price a defendant must pay for attempting to prove his good name is to throw open the entire subject which the law has kept closed for his benefit and to make himself vulnerable where the law otherwise shields him.

335 U.S. at 479. The trial court has broad discretion concerning the cross-examination of character witnesses. *United States v. Boone*, 279 F.3d 163, 175 (3d Cir. 2002); *Kellogg*, 510 F.3d at 192. Correspondingly, the trial judge plays an important role in assuring the fairness of the cross-examination. In *Michelson*, the Court remarked that the discretion to allow relevant cross-examination "is accompanied by heavy responsibility on trial courts to protect the practice from any misuse." 335 U.S. at 480. The Court outlined the safeguards to be taken by the trial court. *Id.* at 480-81. The trial court must ensure that the question is fair, that it rests on a factual foundation, and that it is relevant to the character trait addressed by the defendant's witness. *Id.* at 480-82. Of course, no evidence may be admitted for the jury establishing that the act occurred.

The Court in *Michelson* also emphasized the importance of limiting instructions directing the jury to consider any prior acts brought out in cross-examination only for purposes of assessing the witness's opinion of the defendant's character trait. *Id.* at 472 n.3. In *Government of Virgin Islands v. Roldan*, 612 F.2d 775, 781 (3d Cir. 1979), the Third Circuit stated, "the defendant is entitled to a limiting instruction to the effect that the prior bad act testimony does not bear on the defendant's propensity to commit such crimes again." *See also United States v. Apfelbaum*, 621 F.2d 62, 64 (3d Cir. 1980) (emphasizing importance of limiting instructions); *Kellogg*, 510 F.3d at 192-93 (setting out trial court's limiting instruction). In *Roldan*, however, the defendant had not requested a limiting instruction, and the Third Circuit held that the trial court did not commit plain error by failing to give an instruction.

## **2.21 Defendant's Prior Bad Acts or Crimes (V.I. R.E. 404(b))**

### *\* Option 1: Basic instruction*

**You may consider evidence that the defendant committed an act crime other than the crime for which he is on trial only** [as evidence of the defendant's motive; as evidence of the defendant's intent; as evidence of the defendant's scheme or plan; as evidence of the defendant's identity; as evidence of the defendant's knowledge; as evidence of the defendant's conduct and feelings toward the victim and relations between them; as evidence of the defendant's malice; as evidence of the defendant's premeditation; as evidence of the defendant's opportunity; as evidence of the absence of mistake or accident on the part of the defendant; as evidence to negate the defense that the defendant was merely an innocent bystander; as evidence of the unique nature of the method of committing the crime charged; if prior conviction of that crime is an element that must be proven] **in connection with the crime for which he is on trial and for no other purpose.**

**However, the defendant is not on trial for a crime, wrong, or act that is not included in the** [information; indictment].

### *\* Option 2: More detailed instruction*

**You have heard testimony that the defendant** <summarize other act evidence>.

**This evidence of other** [act; acts] **was admitted only for** [a limited purpose; limited purposes]. **You may consider this evidence only for the** [purpose; purposes] **of deciding whether the defendant** <describe the precise purpose or purposes for which the other act evidence was admitted, for example, that the defendant:

- (i) *had the state of mind, knowledge, or intent necessary to commit the crime charged in the indictment; or*
- (ii) *had a motive or the opportunity to commit the acts charged in the indictment; or*
- (iii) *was preparing or planning to commit the acts charged in the indictment; or*
- (iv) *acted with a method of operation as evidenced by a unique pattern; or*
- (v) *did not commit the acts for which the defendant is on trial by accident or mistake; or*
- (vi) *is the person who committed the crime charged in the indictment. You may consider this evidence to help you decide <describe how the evidence will be used to prove identity, e.g., whether the*

*evidence that the defendant committed the burglary in which the gun that is the subject of this trial was stolen makes it more likely that the defendant was the person who placed the gun in the trunk of the car>.*

**Do not consider this evidence for any other purpose.**

**Of course, it is for you to determine whether you believe this evidence and, if you do believe it, whether you accept it for the purpose offered. You may give it such weight as you feel it deserves, but only for the limited purpose that I described to you.**

**The defendant is not on trial for committing these other acts. You may not consider the evidence of these other acts as a substitute for proof that the defendant committed the [crime; crimes] charged. You may not consider this evidence as proof that the defendant has a bad character or any propensity to commit crimes. Specifically, you may not use this evidence to conclude that because the defendant may have committed the other [act; acts], [he; she] must also have committed the [act; acts] charged in the indictment.**

**Remember that the defendant is on trial here only for <describe the charges briefly>, not for these other acts. Do not return a guilty verdict unless the government proves the [crime; crimes] charged in the indictment beyond a reasonable doubt.**

### ***Practice Note***

**General Rule of Exclusion.** Evidence that shows or tends to show that a defendant committed other crimes is not admissible to show that the defendant committed the crime charged. See V.I. Rule of Evidence 404(b).

This instruction should be given if evidence of defendant's other crimes or acts have been admitted under V.I. Rule of Evidence Rule 404(b). Rule 404(b) provides:

#### **(b) Crimes, Wrongs, or Other Acts.**

**(1) Prohibited Uses.** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

**(2) Permitted Uses; Notice in a Criminal Case.** Evidence of a crime, wrong, or other act may be admissible for other purposes, such as addressing issues, if actually contested in the case, concerning motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident -- provided that the probative value of such proof, supported by specific facts and circumstances, substantially outweighs its prejudicial effect. On request by a defendant in a criminal case, the prosecutor must:

**(A)** provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

**(B)** do so before trial -- or during trial if the court, for good cause, excuses lack of pretrial notice.

Evidence admitted under Rule 404(b) is allowed for a limited purpose, and the court should instruct the jury accordingly.

**Admissibility of other act evidence.** Under *Huddleston v. United States*, 485 U.S. 681 (1988), the Supreme Court has listed four guidelines for admissibility under the Rule. First, the other crimes evidence must have a proper purpose. Second, the proffered evidence must be relevant. Third, its probative value must outweigh its potential for unfair prejudice. Fourth, the court must charge the jury to consider the other crimes evidence only for the limited purpose for which it is admitted.

The proponent of evidence of prior acts must clearly articulate how that evidence fits into a chain of logical inferences, no link of which may be the inference that the defendant has the propensity to commit the crime charged.

The Superior Court should also articulate its reasoning; the court should explain the permissible inference, unless the purpose of the evidence is plainly obvious, and balance the probative value of the evidence against any prejudicial impact.

The government sometimes argues that evidence should be admitted over an objection under Rule 404(b) because it is intrinsic to the charged offense. It has been noted that this consideration may apply to two categories of evidence ( 1) evidence that directly proves the charged offense and thus does not fall in the realm of other crimes, wrongs, or acts governed by Rule 404(b); and (2) uncharged acts performed contemporaneously with the charged crime provided the uncharged act facilitates the commission of the charged crime.

**The instruction.** The instruction should not merely include a laundry list of permitted uses of other act evidence. Rather, it should specifically state the limited purpose for which the other act evidence is admitted based on the record and contentions in the pending case. Thus the instruction is most helpful if it explains to the jury the precise role of the other act evidence

## **2.23 Opinion Evidence (Expert Witnesses)** [Third Circuit model]

**The rules of evidence ordinarily do not permit witnesses to state their own opinions about important questions in a trial, but there are exceptions to these rules.**

**You will hear testimony from <name(s) of the person(s) who will offer an opinion>. Because of (his; her; their) knowledge, skill, experience, training, or education in the field of <state the witness(es)'s field(s)>, <name(s) of witness(es)> will be permitted to offer [an opinion; opinions] in that field and the reasons for [that; those] [opinion; opinions].**

**The [opinion; opinions] that [this; these] [witness; witnesses] [states; state] should receive whatever weight you think appropriate, given all the other evidence in the case. In weighing this opinion testimony you may consider the witness' qualifications, the reasons for the witness' opinions, and the reliability of the information supporting the witness' opinions, as well as the other factors I will discuss in my final instructions for weighing the testimony of witnesses. You may disregard the [opinion; opinions] entirely if you decide that [it is; they are] not based on sufficient knowledge, skill,**

experience, training, or education. You may also disregard the [opinion; opinions] if you conclude that the reasons given in support of [it; them] are not sound, or if you conclude that the [opinion is; opinions are] not supported by the facts shown by the evidence, or if you think that the [opinion is; opinions are] outweighed by other evidence.

### ***Practice Note***

The Third Circuit comments: These instructions avoid labeling the witness as an “expert.” If the court refrains from designating the witness as an “expert” this will “ensure[] that trial courts do not inadvertently put their stamp of authority” on a witness’ opinion, and will protect against the jury’s being “overwhelmed by the so-called ‘experts’.” Hon. Charles Richey, *Proposals to Eliminate the Prejudicial Effect of the Use of the Word “Expert” Under the Federal Rules of Evidence in Criminal and Civil Jury Trials*, 154 F.R.D. 537, 559 (1994). See also Fed. R. Evid. 702 advisory committee’s note (2000) (cautioning against instructing the jury that the witness is an “expert”).

Before the beginning of trial, the judge should discuss with counsel that they should also avoid using the word “expert” to refer to the witnesses. However, if counsel refers to witnesses as “experts,” the trial judge should modify the instruction by telling the jury what an “expert” is. Therefore, the court should include, after the first paragraph of the model instruction set forth above, the following additional paragraph:

The defendant’s lawyer/the prosecutor called (Mr.)(Ms.)(Dr.)(name) an expert witness. Someone who is called an expert witness is simply a witness who, because of his or her knowledge, skill, experience, training, or education, may have become knowledgeable in some technical, scientific, or specialized field and therefore is permitted to state an opinion about that field. You should not give any greater weight or credit to (Mr.)(Ms.)(Dr.)(name)’s testimony merely because he or she was called an expert witness by the lawyers.

### **2.31 Defendant’s Choice not to Testify or Present Evidence** [Third Circuit model]

<Name of defendant> did not [testify; present evidence] in this case. A defendant has an absolute constitutional right not to testify or to present any evidence. The burden of proof remains with the prosecution throughout the entire trial and never shifts to the defendant. The defendant is never required to prove that he is innocent. You must not attach any significance to the fact that <name of defendant> did not testify. You must not draw any adverse inference against (him; her) because (he; she) did not take the witness stand. Do not consider, for any reason at all, the fact that <name of defendant> did not testify. Do not discuss that fact during your deliberations or let it influence your decision in any way.

## ***Practice Note***

Under the Constitution, the defendant in a criminal case has the right to choose whether to testify and the right not to present any evidence. Neither the court nor the prosecutor may comment on the defendant's election to remain silent at trial. *See Griffin v. California*, 380 U.S. 609, 614-15 (1965). If the defendant chooses not to testify, the defendant may also decide to request an instruction directing the jury to draw no negative inference from the defendant's decision not to take the witness stand. The trial court must give such an instruction if requested. *See Carter v. Kentucky*, 450 U.S. 288, 299-303 (1981); *Bruno v. United States*, 308 U.S. 287, 293-94 (1939).

Conversely, a defendant who chooses not to testify may prefer not to have the jury's attention drawn to that fact through an instruction. It is not error to give the instruction over the defendant's objection. *See Lakeside v. Oregon*, 435 U.S. 333, 340-41 (1978). Nevertheless, if the defendant prefers not to have the instruction given, the better practice is to comply with the defendant's wishes. *Id.* at 340.

The instruction contains alternative language – “a defendant” – to be used in a multi-defendant trial where some defendants testify and some do not. The instruction also contains bracketed language to be used when the defendant presents no evidence.

If the defendant testifies, *see* Instruction 2.35 (Defendant's Testimony).

### **2.33 Failure of Defendant to Testify** [Alternative form]

**The defendant does not have to testify, and exercise of that right cannot be considered by you.**

OR

**The defendant in this case has not testified. This is his constitutional right. It is not a circumstance you can take into consideration, or even allow to enter into your discussion in the jury room. Under the Constitution , it is the defendant's constitutional right not to testify. The burden of proof is upon the People to establish his guilt by competent evidence beyond a reasonable doubt.**

**The fact the defendant did not take the witness stand and testify in his own behalf does not create any inference against him. The jury must not permit that fact to weigh in the slightest degree against this defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner.**

### **Sources & Authority**

*Doyle v. Ohio*, 426 U.S. 610 (1976)

### **Practice Note**

**ALERT:** The trial court has the constitutional obligation, upon proper request, to minimize the danger that the jury will give evidentiary weight to the defendant's failure to testify. The Fifth and Fourteenth Amendments require a trial judge to give a "no adverse inference" jury instruction when requested by a defendant to do so.

The constitutional privilege against self-incrimination is a protection from the personnel and processes of government, not from conscience or other motivation to confess. *Colorado v. Connelly*, 479 U.S. 157, 166 (1986). It is not a protection from the coercive activities of other persons, *United States v. Balsys*, 524 U.S. 666, 699 (1998) (possible incrimination under the law of a foreign sovereign does not trigger this amendment).

### **2.35 Defendant's Testimony**

**In a criminal case, the defendant has a constitutional right not to testify. However, if (he; she) chooses to testify, (he; she) is, of course, permitted to take the witness stand on (his; her) own behalf. In this case, <name of defendant> testified. You should examine and evaluate (his; her) testimony just as you would the testimony of any witness.**

### **Practice Note**

Judge Leonard Sand's instruction also includes the following language concerning the defendant's interest in the outcome of the case:

You should examine and evaluate his testimony just as you would the testimony of any witness with an interest in the outcome of this case. You should not disregard or disbelieve his testimony simply because he is charged as a defendant in this case.

Authority is divided on whether it is proper or desirable to instruct the jury concerning the defendant's interest in the case. In *Reagan v. United States*, 157 U.S. 301, 304-05 (1895), the Supreme Court approved the following instruction:

You should especially look to the interest which the respective witnesses have in the suit, or in its result. Where the witness has a direct personal interest in the result of the suit, the temptation is strong to color, pervert, or withhold the facts. The law permits the defendant, at his own request, to testify in his own behalf. The defendant here has availed himself of this privilege. His testimony is before you, and you must determine how far it is credible. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence, and in determining how far, or to what extent, if at all, it is worthy of credit.

Nevertheless, the federal circuits are split on whether the instruction is proper.



## **2.37 Flight from the Scene or Use of False Name to Avoid Prosecution, Detection, or Arrest**

*\* Option 1:*

**If a person** [leaves the place where a crime was committed to avoid prosecution, detection, apprehension or arrest; flees to avoid prosecution, detection, apprehension or arrest; intentionally assumes a false name immediately after the commission of a crime], **this creates no presumption that the person is guilty of having committed the crime. However, it is a circumstance which you may consider along with the other evidence.**

*\* Option 2: Third Circuit model*

**You have heard testimony that after the crime was supposed to have been committed, (name of defendant) (describe the conduct proven; e.g., shaved his beard and cut his hair, went to Los Angeles).**

**If you believe that (name of defendant) (describe the conduct proven), then you may consider this conduct, along with all the other evidence, in deciding whether the government has proved beyond a reasonable doubt that (he)(she) committed the crime charged. This conduct may indicate that (he)(she) thought (he)(she) was guilty of the crime charged and was trying to avoid punishment. On the other hand, sometimes an innocent person may (describe the conduct proven) for some other reason. Whether or not this evidence causes you to find that the defendant was conscious of (his)(her) guilt of the crime charged, and whether that indicates that (he)(she) committed the crime charged, is entirely up to you as the sole judges of the facts.**

### **ADDITIONAL EXAMPLE**

#### **IMMEDIATE FLIGHT**

Evidence that the defendant immediately fled after having been confronted by the police is a circumstance that, if proven, can be considered by the jury as a showing of the defendant's consciousness of guilt. In your evaluation of the evidence of flight you may consider that there may be reasons fully consistent with innocence that could cause a person to flee. Fear of law enforcement, a reluctance to become involved in an investigation, or simple mistake may cause a person who has committed no crime to immediately flee. It is entirely up to you to determine whether evidence of defendant's immediate flight causes you to find a consciousness of guilt and the significance, if any, of that consciousness of guilt.

## Sources & Authority

*Nanton v. People*, 52 V.I. 466 (2009)

### Practice Note

Certain types of behavior by a defendant may suggest consciousness of guilt and therefore be admissible as evidence that the defendant acted out of awareness of guilt of the charged offense, which in turn may be used by the jury as evidence of guilt. This category includes evidence of the defendant's flight or concealment, use of an alias, concealment or destruction of evidence, making false exculpatory statements, and threatening or tampering with a witness or juror. This instruction explains to the jury the inference that may be drawn from the admitted evidence. The instruction should be tailored to the evidence admitted in the trial.

The court should generally apply Rule 403 of the V.I. Rules of Evidence when considering this type of evidence, asking whether the evidence generates a risk of unfair prejudice that substantially outweighs the fair probative value. In addition, the admissibility of these types of evidence will sometimes need to be evaluated under Rule 404(b) of the Rules of Evidence, which allows introduction of other act or crime evidence if it is probative for a purpose other than proof of character.

The law views evidence of flight as an admission by conduct reflecting consciousness of guilt, depending upon whether there is sufficient evidence to establish the following four inferences: (1) from the defendant's behavior to flight; (2) from flight to consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to the actual guilt of the crime charged.

### 2.41 Chain of Custody

**The defense has raised the issue of defects in the chain of custody of <describe evidence in question; e.g., the firearm, the drugs>. You may consider any defects in determining the authenticity of this evidence and what weight to give it. The government must prove beyond a reasonable doubt that the <describe evidence in question> [is; are] the same as the <describe evidence alleged in the indictment or introduced during the trial>.**

### Practice Note

This instruction may be given if a colorable question is raised at trial concerning the authentication of a critical item of evidence.

Chain of custody is initially a question for the court. In order to admit certain items of evidence, the court must determine that there is sufficient evidence of their authentication to satisfy Rule 901 of the V.I. Rules of Evidence. Rule 901(a) provides:

**In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

### **2.43 Specific Investigation Techniques Not Required**

**During the trial you heard testimony of witnesses and argument by counsel that the government did not use specific investigative techniques such as <describe omitted techniques that have been addressed in testimony or argument; e.g., fingerprint analysis, DNA analysis, the use of recording devices>. You may consider these facts in deciding whether the government has met its burden of proof, because as I told you, you should look to all of the evidence or lack of evidence in deciding whether the defendant is guilty. However, there is no legal requirement that the government use any of these specific investigative techniques or all possible techniques to prove its case. There is no requirement to <mention omitted techniques; e.g., attempt to take fingerprints or offer fingerprint evidence, gather DNA evidence or offer DNA analysis, or use recording devices or offer recordings in evidence>.**

**Your concern, as I have said, is to determine whether or not the evidence admitted in this trial proves the defendant's guilt beyond a reasonable doubt.**

### **Practice Note**

In this era of “CSI” and innumerable “true crime” and detective television programs, Jurors may arrive at the trial with preconceptions about the use of specific investigative techniques and may expect the government to present evidence such as fingerprint, fiber or DNA analysis to help resolve the case. As a result, they may be reluctant to rely on other types of evidence, particularly witness testimony, either to convict or to acquit. These expectations should not be permitted to prejudice the government. If the defendant has argued that the government’s case is deficient because of the failure to use one or more specific investigative techniques, this instruction may be appropriate. If the court decides to give this instruction, the court must be careful not to place its imprimatur on the investigative choices of either party.

In *United States v. Brown*, 658 F.App’x. 100 (3d Cir. 2016) (non-precedential), and *United States v. Gorny*, 655 F.App’x. 920 (3d Cir. 2016) (non-precedential), the Third Circuit rejected challenges to this model instruction. In *Gorny*, the court noted that the instruction accurately stated the law. In both decisions, the court held that the instruction did not improperly shift the burden to the defendant and recognized that other circuits have approved the use of such an instruction. The court also held that defense arguments targeting the government investigation in each of the cases made it appropriate for the trial court to give the “anti-CSI” instruction.

In rare cases, a question may arise concerning the defendant’s failure to employ specific investigative techniques. The court should not instruct on this question unless the defendant consents. Any comment may interfere with the defendant’s right not to present evidence.

If the missing evidence that is highlighted is the testimony of an absent witness, the court should not give this instruction.

### **2.51 Child Witness**

**You have heard the testimony of <child's name>. A child may be permitted to testify even though (he; she) is very young. You must determine, as with any witness, whether you believe <child's name>'s testimony and how much weight, if any, you think it deserves. In making this determination, you may consider whether (he; she) understood the questions, whether (he; she) accurately perceived the events in question, whether (he; she) has a good memory, whether (he; she) understood (his; her) duty to tell the truth, and any other factors that are reasonably pertinent.**

**It is up to you to decide whether <child's name> understood the seriousness of (his; her) appearance as a witness at this criminal trial and whether (he; she) was truthful.**

#### ***Practice Note***

A child is not rendered incompetent to testify merely because of age. Rule 601 of the V.I. Rules of Evidence provides that all witnesses are competent. When a child testifies, the court may want to instruct the jury concerning how to approach the task of assessing this witness' credibility. The Third Circuit has not addressed the question of an instruction on the credibility of a child witness. Other circuits have held that the trial court has discretion to determine whether to give such an instruction.

### **2.53 Credibility of a Police Informant as a Witness**

**You have heard evidence that <name of witness> has an arrangement with the government under which (he; she) [gets paid; receives <describe benefit>] for providing information to the government. <Name of witness>'s testimony was received in evidence and may be considered by you. The government is permitted to present the testimony of someone who <gets paid; receives <describe benefit>] for providing information to the government, but you should consider the testimony of <name of witness> with great care and caution. In evaluating <name of witness>'s testimony, you should consider this factor along with the others I have called to your attention. You may give the testimony such weight as you think it deserves. It is for you to determine whether or not <name of witness>'s information or testimony may have been influenced by (his; her) arrangement with the government.**

## **Practice Note**

The government may lawfully employ paid informants to assist in the investigation of crime and may call an informant as a witness at trial. *See Hoffa v. United States*, 385 U.S. 293, 312 (1966). The court should instruct the jury to approach the informant's testimony with caution. In *Hoffa*, the U.S. Supreme Court noted favorably that the trial court had given the jury the following instruction:

You should carefully scrutinize the testimony given and the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider each witness' intelligence, his motives, state of mind, his demeanor and manner while on the witness stand. Consider also any relation each witness may bear to either side of the case \* \* \* . All evidence of a witness whose self-interest is shown from either benefits received, detriments suffered, threats or promises made, or any attitude of the witness which might tend to prompt testimony either favorable or unfavorable to the accused should be considered with caution and weighed with care.

385 U.S. at 312 n.14. Authority has not been located regarding the granting of such an instruction in the Virgin Islands. The mere fact that there is enough evidence of authentication to support admitting the evidence does not foreclose the possibility that a question of authenticity may also be raised at trial. For example, in *United States v. Dent*, 149 F.3d 180 (3d Cir. 1998), the defendant argued that the government had failed to establish a reliable chain of custody. The Third Circuit stated that “[t]o establish a chain of custody, the government need only show that it took reasonable precautions to preserve the evidence in its original condition,” and need not exclude all possibility of tampering. *Id.* at 188. A defect in the chain of custody goes to the weight of the evidence, not its admissibility. *See United States v. Briley*, 319 F.3d 360, 363 (8th Cir. 2003); *United States v. Gorman*, 312 F.3d 1159, 1163 (10th Cir. 2002); *United States v. Rodriguez*, 162 F.3d 135, 144 (1st Cir. 1998). Thus, questions about the chain of custody might cause the jury to acquit even though the evidence was properly admitted.

If the defendant offers evidence that must be authenticated, the same principles govern. The court must assure adequate evidence of authenticity to satisfy the rules of evidence. Even if the evidence is properly admitted, the government may argue to the jury that it is not actually authentic. Of course, the defendant has no burden of proof, but the government may persuade the jury that the defendant's evidence has no probative value.

### **2.55 Testimony of Accomplice**

**<Name of person> has testified that he was an accomplice in the commission of the crime charged in the indictment. While you may find your verdict upon his uncorroborated testimony, you should consider such testimony with great care and you are cautioned as to the danger of convicting the defendant upon the**

**uncorroborated testimony of an accomplice. Nevertheless, if you are satisfied from the evidence of the guilt of the defendant beyond a reasonable doubt, the defendant may be convicted upon the uncorroborated evidence of an accomplice.**

### **Sources & Authority**

#### **5 V.I. Code § 740(4)**

*Frett v. People*, 66 V.I. 399 (2017); *Rivera v. People*, 64 V.I. 540 (2016); *Ventura v. People*, 64 V.I. 589 (2016); *Fahie v. People*, 62 V.I. 625 (V.I. 2015)

### **Practice Note**

In *Frett* the Supreme Court indicated that “where proper,” 5 V.I.C. § 740(3) “directs that . . . the jury is to be instructed that “[t]he testimony of an accomplice ought to be viewed with distrust and the evidence of the oral admissions of a party with caution.” The wording of the Instruction here is intended to implement that statutory provision. 66 V.I. at 422. See *Ventura*, 64 V.I. at 606 n.7 (one who helped clean up blood after a crime “could be considered an accomplice” for purposes of warranting an instruction under this statute).

Tracking the statute slavishly is apparently not required. The Supreme Court in *Fahie* noted that there was no plain error where “the trial court did not emphasize that [the] testimony [of an accomplice] should be given ‘great care and caution’ in those exact words, [but nonetheless] did inform the jury that they should ‘examine his testimony with caution’ ” 62 V.I. at 640. This is consistent with the approach taken in the leading decision of *Ostalaza v. People*, 58 V.I. 351, 561 (2013), declining to find error where an instruction “covers the substance” of a model or other requested instruction.

## **2.61 Eyewitness Identification**

**You should evaluate the testimony of an eyewitness who identified the defendant as the person he saw [committing the crime; involved in the crime] in the same manner as you would for any other witness, including any biases or motives to lie. Additionally, even if you believe the witness was trying to tell the truth, you must still decide whether the witness was accurate about the identification or instead made an honest mistake. In weighing such testimony, you may consider the following:**

- (1) Whether the witness had an adequate opportunity to observe the person [committing the crime; involved in the crime]. In that regard, the circumstances you may consider include [the amount of time the witness had to observe (him; her); the distance between (him; her) and the witness; lighting conditions; weather conditions; obstructions; how closely the witness was paying attention to (him; her); whether the witness knew a crime was being committed; the extent to which the person’s features were visible and**

undisguised; whether a weapon was present that may have affected the witness's attention], **and any other circumstances you believe are important.**

- (2) Whether the witness had the ability to observe the person** [committing the crime; involved in the crime]. **In that regard the circumstances you may consider include** [the witness's intelligence; whether the witness was stressed or frightened, fatigued, injured, or under the influence of drugs or alcohol at the time (he; she) made the observations; whether the witness had impaired vision which was uncorrected at the time (he; she) made the observations; whether the witness and the person committing or involved in the crime were of different races, because some witnesses may have greater difficulty in accurately identifying members of a different race], **and any other circumstances you believe are important.**
- (3) Whether the witness's identification of the defendant was the product of the witness's own memory or to what extent it** [was; may have been] **the result of outside influences. In that regard the circumstances you may consider include** [whether the witness ever gave a description of the person who committed or was involved in the crime and, if so, how that description compares to the defendant; whether the witness knew or had seen the defendant prior to witnessing the crime; the amount of time that passed between the crime and the witness's later identification of the defendant; whether the witness made the identification after being exposed to any outside influences or information, which may include any opinions, descriptions, or identifications given by others, photographs, newspaper accounts, televised or online news stories, or any other outside information or influences; whether the witness was ever presented with the defendant and failed to identify the defendant as the person who committed or was involved in the crime; whether the witness previously identified a different individual as the person who committed or was involved in the crime; whether the witness was able to identify other participants in the crime], **and any other circumstances you believe are important.**

**In weighing the witness's identification, you may consider whether the procedures used by law enforcement had any influence on the witness's identification. For example, you may consider the manner in which photographs were selected and presented to the witness, or comments made by the police to the witness, or** *<describe other procedure used or actions taken by law enforcement>.*

**A witness) who testified about the identification of the person who** [committed the crime; was involved in the crime] **does not have to be certain that the identification** (he; she) **made is correct. A witness may be unsure and still be correct in**

**his identification. On the other hand, a witness's confidence in (his; her) identification does not by itself mean that the identification is accurate.**

**This instruction is not intended to direct you to give more or less weight to the eyewitness identification evidence. It is your duty to determine what weight to give to that evidence.**

#### **ADDITIONAL EXAMPLE**

##### **IDENTIFICATION EVIDENCE**

One of the most important issues in this case is whether (name) is the person who committed the crimes charged in the Amended Information. The People have the burden of proving every element of those crimes, including identity, beyond a reasonable doubt. Although it is not essential that a witness testifying about an identification be free from doubt as to the accuracy or correctness of the identification, you must be satisfied beyond a reasonable doubt based on all the evidence that the defendant is the person who committed the crimes charged. If you are not convinced beyond a reasonable doubt that (name) is the person who committed the crimes charged in the Information, you must find the defendant not guilty.

Identification testimony is, in essence, the expression of an opinion or belief by the witness. The value of the identification depends on the witness' opportunity to observe the person who committed the crime at the time of the offense and the witness' ability to make a reliable identification at a later time based on those observations.

You must decide whether you believe the witness' testimony and whether you find beyond a reasonable doubt that the identification is correct. You should evaluate the testimony of a witness who makes an identification in the same manner as you would that of any other witness.

In addition, as you evaluate a witness' identification testimony you should consider the following questions:

You should ask whether the witness was able to observe and had an adequate opportunity to observe the person who committed the crimes charged. Many factors affect whether a witness has an adequate opportunity to observe the person committing the crime; the factors include the length of time during which the witness observed the person, the distance between the witness and the person, the lighting conditions, how closely the witness was paying attention to the person, whether the witness was under stress while observing the person who committed the crime, whether the witness knew the person from some prior experience, whether the witness and the person committing the crime were of different races, and consider any other factors you regard as important.



You should ask whether the witness is positive in the identification and whether the witness' testimony remained positive and unqualified after cross-examination. If the witness' identification testimony is positive and unqualified, you should ask whether the witness' certainty is well-founded.

You should ask whether the witness's identification of defendant after the crime occurred was the product of the witness' own recollection. You may take into account both the strength of the later identification and the circumstances under which that identification was made. You may wish to consider how much time passed between the crime and the witness' later identification of the defendant. You may also consider whether the witness gave a different description of the person who committed the crime and how the witness' description of the person who committed the crime compares to the defendant.

If the identification was made under circumstances that may have influenced the witness, you should examine that identification with great care. Some of the circumstances that may influence a witness' identification are whether the witness was presented with more than one person or just the defendant, whether the witness made the identification while exposed to the suggestive influences of others, and whether the witness identified the defendant in conditions that created the impression that the defendant was involved in the crime.

And, you should ask whether the witness failed to identify defendant at any time, identified someone other than the defendant as the person who committed the crime, or changed his or her mind about the identification at any time.

After examining all of the evidence, if you have a reasonable doubt as to whether (name) is the individual who committed the crimes charged, you must find the defendant not guilty. But, if the People have proven all the elements of the offense beyond a reasonable doubt, a positive identification by a single witness of the defendant as the one who committed a crime is sufficient to sustain a conviction, if it convinces you, after consideration of all of the evidence, that the People have proven the identity of the defendant as the perpetrator of the crime.

## **Sources & Authority**

*Ostalaza v. People*, 58 V.I. 531 (2013)

## ***Practice Note***

At present, the vast majority of federal circuits and over 20 states have adopted an instruction addressing eyewitness testimony. *See Perry v. New Hampshire*, 565 U.S. 228, 246 n.7 (2012) (citing model eyewitness instructions in federal and state jurisdictions). The Virgin Islands Supreme Court in *Ostalaza* reviewed a case in which the defendant requested a lengthy

instruction on eyewitness identification, from the Third Circuit’s model instructions. The trial court, instead, gave a more limited instruction on the topic. 58 V.I. at 560-61. The Supreme Court seemed willing to assume, for purposes of decision, that “the trial court should have provided the entire model jury instruction,” but did not hold that a full-blown instruction was required in all cases. *Id.*

The approaches taken by the federal circuits and sister states vary as to whether such an instruction is mandatory. In *Perry*, the Court grounded its holding—that due process does not require a preliminary inquiry into the reliability of an eyewitness identification not arranged by law enforcement—partially on the “safeguards built into [the] adversary system that caution juries against placing undue weight on eyewitness testimony of questionable reliability.” *Id.* at 245. According to the Court, one of these safeguards is the availability of “[e]yewitness-specific jury instructions, which many federal and state courts have adopted, [which] likewise warn the jury to take care in appraising identification evidence.” *Id.* at 245-47. A number of courts in sister states have adopted model eyewitness instructions both before and after *Perry*. *State v. Henderson*, 27 A.3d 872 (N.J. 2011); *State v. Long*, 721 P.2d 483 (Utah 1986); *State v. Cabagbag*, 127 Haw. 302 (Haw. 2012); In re: Standard Jury Instructions in Criminal Cases—Report No. 2011-05, No. SC11-2517 (Fla. 2012).

Other courts adopted instructions prior to *Perry*. See *Perry*, 565 U.S. at 245-27 (citing instructions from federal and state courts). See, e.g., *United States v. Greene*, 704 F.3d 298, 313 (4th Cir. 2013); *Barber v. United States*, 412 F.2d 775 (5th Cir. 1969); *Commonwealth v. Rodriguez*, 391 N.E.2d 889, 897-98 (Mass. 1979); *Commonwealth v. Santoli*, 680 N.E.2d 1116 (Mass. 1997); *State v. Dyle*, 899 S.W.2d 607 (Tenn. 1995); *State v. Long*, 721 P.2d 483, 487-95 (Utah 1986); *State v. Watson*, 318 S.E.2d 603 (W. Va. 1984). Efforts to further improve instructions addressing eyewitness testimony have continued subsequent to *Perry*. See, e.g., *Commonwealth v. Gomes*, 22 N.E.3d 897, 909-10 (2015) (explaining that “a principle is so generally accepted that it is appropriate to include in a model eyewitness identification instruction where there is a near consensus in the relevant scientific community adopting that principle,” and concluding that, based on scholarly research, analyses by other courts, amici submissions, and a state court study group report and comments, “there are various principles regarding eyewitness identification for which there is a near consensus in the relevant scientific community” making it “appropriate to revise the [*Commonwealth v.*] *Rodriguez* [model eyewitness] instruction to include them”); Supreme Judicial Court of Massachusetts, Study Group on Eyewitness Evidence—Report and Recommendations to the Justices (July 25, 2013), available at <http://www.mass.gov/courts/docs/sjc/docs/eyewitness-evidence-report-2013.pdf> [<http://perma.cc/WY4M-YNZN>], and comments responding thereto, available at <http://www.mass.gov/courts/docs/sjc/docs/eyewitness-evidence-report-comments.pdf> [<http://perma.cc/UF62-STVZ>].

Given the complexity of the issue as well as the Supreme Court’s view that a trial court may grant such an instruction in its discretion, the instruction below represents the committee’s effort to craft such an instruction in order to assist the practitioner. The court and practitioners should be mindful that this instruction has not been approved by the Supreme Court of the Virgin Islands.

As with all instructions, the instruction should be revised to fit the facts of the particular case. Thus, for example, if the eyewitness did not make a cross-racial identification, the language about an identification of a person of a different race should be removed from the instruction.

The instruction provides that the jury may consider whether the procedures law enforcement officers used may have influenced the witness's identification. A Model Policy on Eyewitness Identification, which was adopted by the Virginia Department of Criminal Justice Services on November 16, 2011, and later revised, is one example of best practices with regard to lineup and photographic lineup procedures. These detailed procedures, for example, provide that in photographic lineups, the photographs should be presented sequentially rather than all at once, give instructions about the use of fillers, and instruct law enforcement personnel to "[a]void saying anything to the witness that may influence the witness's selection." The Model Policy is available online at the website of the Virginia Department of Criminal Justice Services. See [https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/law-enforcement/files/model-policy/lineups-eyewitness\\_identification.doc](https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/law-enforcement/files/model-policy/lineups-eyewitness_identification.doc) (March 19, 2014 rev. ed.) (last visited January 18, 2018).

## **2.71 Judicial Notice** [Third Circuit model; adapted]

**I have taken judicial notice of** [a certain fact; certain facts], **specifically** *<state the fact(s) that are being judicially noticed.>*

**I believe** [this fact is; these facts are] [of such common knowledge; capable of being accurately and readily determined from<*name accurate source*>] **that** [it; they] **cannot reasonably be disputed. You may accept** [this fact; these facts] **as proven, but are not required to do so. As with any fact, the final decision whether or not to accept it is for you to make, and you are not required to agree with me.**

### **Sources & Authority**

#### **V.I. Rule of Evidence 201.**

##### ADDITIONAL EXAMPLE

##### JUDICIAL NOTICE

Even though no evidence has been introduced about it, I have decided to accept as proven the fact that June 4, 2006, was a Sunday. I believe this fact is of such common knowledge or can be so accurately and readily determined from a calendar that it cannot reasonably be disputed. You may, therefore, treat this fact as proven, even though no evidence was brought out on this point. As with any fact, however, the final decision whether or not to accept it is for you to make and you are not required to agree with me.

### **Sources & Authority**

#### **V.I. Rule of Evidence 201.**

## **Practice Note**

Rule 201 of the V.I. Rules of Evidence governs judicial notice of adjudicative facts. Rule 201(b) defines the kinds of facts that may be judicially noticed:

**(b) Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

- (1) is generally known within the trial court's territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Judicial notice may be taken at any stage of the proceedings, but generally only after the parties have been afforded an opportunity to be heard on the matter. An instruction on judicial notice should be given at the time that notice is taken. It may also be given at the time the jury is charged at the close of the evidence.

Rule 201(f) directs that “[i]n a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.” Thus, the rule for criminal cases differs from the rule for civil cases, in which the jury has no discretion to reject judicially noticed facts. The Third Circuit has noted with approval instructions that adhere to the language of the comparable FRE provision for criminal cases. *See United States v. Mitchell*, 365 F.3d 215, 251 n.28 (3d Cir. 2004); *United States v. Saada*, 212 F.3d 210, 223 (3d Cir. 2000).

### **2.77 Opinion Testimony; Expert Witnesses**

**You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education, or experience, have acquired substantial knowledge in some field may state their opinions on matters in that field and may also state the reasons for their opinions.**

**Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness' knowledge, skill, training, education, and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.**

### **2.79 View of the Scene**

**You will now have an opportunity to view the scene where events discussed in this trial are alleged to have occurred. What you observe at the scene is not evidence since conditions may have changed since the time of the events in this case. Any evidence concerning the physical appearance of the scene must come to you from the witnesses who testify at trial and the exhibits introduced into evidence. The sole**

purpose of viewing the scene is to help you understand and evaluate the evidence you receive during this trial.

The attorneys, the defendant, the marshals, and I will all be present during your view of the scene, and the court reporter will also be present to record what occurs during the view of the scene. But, the defendant will remain inside a vehicle at the scene and no one other than the Marshals or me will be permitted to communicate with you at the scene. No evidence will be presented to you at that time. In addition, you will not be permitted to communicate with each other or anyone other than the Marshals. You should disregard any comment that you may overhear being made by the attorneys, witnesses, spectators, or anyone else during the view of the scene in arriving at your verdict.

Finally, no member of the press may photograph, film, or otherwise record, depict, or publish the image of any juror, or any body part of any juror, at the scene or during preparations or travel to or from the scene. A violation of this order is punishable as contempt of court.

### **2.81 Video and Audio Recording; Transcript**

As part of the evidence in this case you have seen and heard a video and audio recording. In order to assist you in that following that recording while it was played, you were also given a transcript. If you find that there are any inconsistencies between the recording and the transcript, it is your recollection of what you actually saw and heard on the recording, rather than the transcript, that should control.

### **2.83 Redactions**

Documents have been received in evidence from which portions have been blacked out. These redactions are made for the purpose of ensuring that the evidence is presented to you in accordance with the requirements of the law, to prevent confusion, or to avoid error. You should not concern yourself with the reasons for the removal of portions of the documents, nor should you attempt to guess what information might have been removed from the documents. You may consider only the portions of the documents that have been admitted into evidence in arriving at your verdict.

## **2.85 Immunized Witness**

**You have heard testimony from a witness who was granted use immunity; that is, the People agreed that (his; her) testimony would not be used against (him; her) in a criminal case if (he; she) cooperated and gave truthful testimony. (His; Her) testimony has been received in evidence and may be considered by you. The People are permitted to present the testimony of someone with whom they have entered into such an agreement. But, you should consider (his; her) testimony with great care and caution. In evaluating (his; her) testimony, you should consider this factor along with the others I mentioned in instructing you about witness credibility. Whether the testimony of the witness has been influenced by the People's agreement is for you to determine. You may give (his; her) testimony such weight as you think it deserves.**

## Chapter 3. DEFENSES

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### 3.01 Alibi

The defendant relies upon the defense that (he; she) was not present at the time and place the alleged crime was committed. If, after consideration of all the evidence, you have a reasonable doubt that the defendant was present at the time and place the alleged crime was committed, you shall find (him; her) not guilty.

#### Sources & Authority

*Davis v. People*, 2018 V.I. Supreme LEXIS 23 (2018); *Rivera v. People*, 64 V.I. 540 (2016); *Estick v. People*, 62 V.I. 604 (2015); *Percival v. People*, 62 V.I. 477 (2015)

### ***Practice Note***

Alibi is a defense. An alibi instruction must be given where there is evidence that the defendant was not at the scene of the crime at the exact time or for the entire period during which it was or could have been committed.

See V.I. Rule of Criminal Procedure 12.1.

### **3.03 Claim of Right**

**If you believe the defendant** [took the property (he; she) is charged with stealing; converted to (his; her) own use the property (he; she) is charged with embezzling; took the property in the robbery with which (he; she) is charged; engaged in <name criminal activity>] **under a belief that** (he; she) **had a good faith claim of right to** [take it; engage in that activity], **then, even though** (his; her) **belief was mistaken, you shall find the defendant not guilty of** [larceny; larceny by embezzlement; robbery; <name criminal activity>].

### **Sources & Authority**

*DeGroot v. People*, 2013 V.I. Supreme LEXIS 16 (V.I. 2013)

### ***Practice Note***

The principle reflected in the instruction has been generalized in this fashion: If A, with criminal intent, takes the pistol of B, and breaks it to pieces, so that it is worthless, A is guilty of the larceny of B's pistol. If, however, A, in good faith, believes it belongs to him, although the taking is by trespass, yet he is not guilty of larceny by destroying it, because there was no criminal intent on A's part to deprive B permanently of a pistol that belonged to him, but to destroy what A, in good faith, believed to be his own property. In other words, a bona fide claim of right is a sincere, although perhaps mistaken, good faith belief that one has some legal right to engage in the challenged activity. The claim need not be one of title or ownership, but it must rise to the level of authorization.

Whether the defendant acted in good faith is usually a question for the jury. The question is one of law for the court when reasonable persons can only fairly draw one conclusion from the undisputed facts.

This instruction can be used in cases of larceny, robbery, trespass, property damage, and embezzlement where the defense is one of good faith claim of right. However, it is not a defense if the defendant is charged with extortion

### **3.05 Duress**

**If you find from the evidence that the defendant acted under duress, then you must find** (him; her) **not guilty. In order for the defendant to use the defense of duress, you must find from the evidence that** (he; she) **was threatened and that** (he; she) **had a reasonable fear of imminent death or serious bodily injury. The defense of**



**duress is not available if the defendant had a reasonable opportunity to escape and did not do so, or if (he; she) had a reasonable opportunity to avoid committing the crime without being harmed.**

### **Sources & Authority**

*Williams v. People*, 55 V.I. 721 (2011)

#### ***Practice Note***

To support a defense of duress, the defendant must demonstrate that his or her criminal conduct was the product of an unlawful threat that caused her reasonably to believe that performing the criminal conduct was their only reasonable opportunity to avoid imminent death or serious bodily harm, either to herself or another

The defense of duress may also be available to a defendant who has committed a criminal act because of threats made against members of his family. In such cases, the instruction wording should be modified accordingly.

### **3.07 Entrapment**

**Entrapment is the origination and planning of a crime by an officer of the law and (his; her) procurement of its commission by one who would not have committed it except for the trickery, persuasion or fraud of the officer. Where a person intends to and does commit the crime, the fact that officers of the law provided a favorable opportunity for, aided or encouraged the commission of the crime is not entrapment. If you believe:**

- (1) That the defendant had no previous intent or purpose to commit the crime; and**
- (2) That an officer of the law, directly or through his agents, originated in the mind of the defendant the idea to commit the crime; and**
- (3) That an officer of the law, directly or through his agents, caused the defendant to commit the crime by trickery, persuasion or fraud,**

**then you shall find the defendant not guilty even though you may believe from the evidence that (he; she) consented to the commission of the crime.**

### **Sources & Authority**

*United States v. Jimenez Recio*, 537 U.S. 270 (2003); *Jacobson v. United States*, 503 U.S. 540 (1992); *Sorrells v. United States*, 287 U.S. 435 (1932)

## **Practice Note**

As the United States Supreme Court said in *Jimenez Recio*, the law “independently forbids convictions that rest upon entrapment.” 537 U.S. at 276. The Superior Court has noted, in overview, that the rationale behind the rule against entrapment is that the “legitimate law enforcement function of crime prevention does not include the manufacturing of crime.” *People v. Poleon*, 50 V.I. 144, 151 (Super. Ct. 2008).

There is no statute in the Virgin Islands regarding the defense of entrapment. However, the common law has clearly outlined the elements of the defense and describe the evidence required to submit the question to a jury.

The essence of the alibi defense is that the defendant did not originate the intent to commit the crime and that, but for the intervention of the law enforcement officers, he would not have committed the crime. Thus, the defense is a function of the general rule that law enforcement officers are not permitted to generate in the mind of a person the original intent to commit a criminal act which the person would not commit without such inducements.

When officers of the law or their agents aid or encourage the commission of acts constituting the crime, but do not originate the criminal intent, the defense of entrapment is not available. If the criminal intent originates in the mind of the accused, the fact that an opportunity is furnished or that the accused is aided by police in the commission of the crime in order that they might obtain evidence against him, does not constitute entrapment.

It is for the trial court to determine whether there is sufficient evidence to submit the issue of entrapment to the jury. In considering this question, the normal canon of construction is that the judge must view the evidence in the light most favorable to the theory of entrapment. However, it is error to give an instruction, though correct as an abstract statement of law, unless there is sufficient evidence in the record to support it.

**Co-defendants.** In 1985 the Territorial Court held that reliance by a co-defendant on a theory of entrapment does not, without more, require severance. The “essence or core” of the defenses must be in such conflict that the jury must necessarily disbelieve the core of one defense in order to believe the core of the other. The critical factor is that the defenses must be in conflict and not merely facts which do not constitute the core of the defenses. *Government of the V.I. v. Petersen*, 1985 V.I. LEXIS 47 \*5 (V.I. Terr. Ct. 1985).

### **3.09 Self-Defense**

**Once the defendant presents some evidence that (he; she) acted in self-defense, the People have the burden of proving the absence of self-defense beyond a reasonable doubt. After considering all of the evidence, unless you are convinced beyond a reasonable doubt that the defendant was not acting in self-defense at the time the offense was committed, then you must find the defendant not guilty of the offense.**

## **Sources & Authority**

**14 V.I. Code § 43**

*Powell v. People*, 2019 V.I. 2; *Davis v. People*, 2018 V.I. Supreme LEXIS 23 (V.I. July 27, 2018); *Petric v. People*, 61 V.I. 401 (V.I. 2014); *Joseph v. People*, 60 V.I. 338 (V.I. 2013); *Fahie v. People*, 59 V.I. 505 (V.I. 2013); *Jackson-Flavius v. People*, 57 V.I. 716 (V.I. 2012); *Prince v. People*, 57 V.I. 399 (VI. 2012); *Phipps v. People*, 54 V.I. 543 (V.I. 2011)

### ***Practice Note***

A version of this Instruction was held to be a “proper instruction” in *Jackson-Flavius*, 57 V.I. at 727. The self-defense statute, 14 V.I.C. §43, reads in its entirety:

The right of self-defense does not extend to the infliction of more harm than is necessary for the purpose of defense. To justify a homicide on the ground of self-defense, there must be not only the belief but also reasonable ground for believing that at the time of killing the deceased, the party killing was in imminent or immediate danger of his life or great bodily harm.

In a prosecution for murder, inter alia, if a defendant raises, through either cross-examination or putting on evidence, one or more affirmative defenses (e.g., self-defense (14 V.I.C. § 43), justifiable homicide (14 V.I.C. § 927(2)), defense of others (14 V.I.C. § 42), etc.), it is the People's burden to disprove those affirmative defenses beyond a reasonable doubt. *Petric*, 61 V.I. at 410; *Phipps*, 54 V.I. at 548.

“The trial court is required to instruct the jury regarding self-defense if the defendant places self-defense in issue.” *Davis*, 2018 V.I. Supreme LEXIS 23, \*18; *Fahie*, 59 V.I. at 512; *Phipps*, 54 V.I. at 549. However, a defendant is entitled to an instruction on self-defense doctrines “only if the trial record contained evidence sufficient for a reasonable jury to find these defenses.” *Davis*, 2018 V.I. Supreme Lexis at \*18; *Prince*, 57 V.I. at 412. A defendant’s own testimony may be sufficient to place self-defense in issue: “when a defendant raises a claim of self-defense — even through his own testimony without any corroboration — the Superior Court possesses a duty to instruct the jury that the People must disprove the self-defense claim beyond a reasonable doubt. *Joseph*, 60 V.I. at 348; *Phipps*, 54 V.I. at 547-48.

**Failure to Withdraw from the Conflict.** In *Davis* the Supreme Court stated flatly that a first aggressor who did not attempt to withdraw from the confrontation . . . simply was not entitled to an instruction for self-defense.” 2018 V.I. Supreme LEXIS 23 \*19, citing *Prince*, 57 V.I. at 413, where it had noted that the evidence was insufficient to warrant a self-defense instruction where defendant “[w]as the initial instigator and aggressor.”

**Example.** In *Powell*, a 2019 decision, the Supreme Court reported a fully-rounded instruction on self-defense in a death case:

The defendant has asserted self-defense as a defense to the charges. If the defendant was not the aggressor and had reasonable grounds to believe and actually did believe in his own mind that he or another was in imminent danger of death or serious bodily harm, he had the right to use such force as was necessary to defend himself or the other person.

Virgin Islands law defines “self-defense” as follows: The right of self-defense does not extend to the infliction of more harm than is necessary for the purpose of defense. To justify a homicide on the grounds of self-defense there must be not only the belief but also reasonable grounds for believing

that at the time of killing the party killing was in imminent or immediate danger of his life or great bodily harm.

The danger must be real or honestly believed at the time and founded upon reasonable grounds.

Generally, the right to use deadly force in self-defense is not available to one who is the aggressor or provokes the conflict. However, if one who provokes a conflict thereafter withdraws from it in good faith and informs his adversary by words or action that he desires to end the conflict and he is thereafter pursued he is justified in using deadly force to save himself or others from imminent danger or death or serious bodily harm.

Any person is justified in using force when they are resisting an attempt by another to kill or seriously injure him or another.

The force used to deflect an aggressor's threatening harm must be reasonable and necessary. And an application of greater force than that which is necessary is unlawful. You should consider all of the relevant circumstances including the time of day, the location, the visibility conditions and the type of weapon, object or instrument involved.

If you find that the People have failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, then you must find the defendant not guilty of homicide.

2019 VI 2 ¶43. In discussion, the Court noted that the mens rea of intention to commit a crime is inextricably intertwined with an entrapment defense “because justification/self-defense necessarily negates intent (mens rea) and unlawfulness.” *Id.* at ¶48.

Thus, in general, a person in reasonable apprehension of bodily harm by another is privileged to exercise reasonable force to repel the assault, but the amount of force must be reasonable in relation to the perceived threat.

The force used to deflect an aggressor's threatened harm must be reasonable and necessary, and application of a greater force than that necessary is unlawful. *Government of the V.I. v. Frett*, 14 V.I. 315 (V.I. Terr. Ct. 1978). Deadly force is justified only when there is an overt threat indicative of imminent danger and the defendant reasonably feared death or serious bodily injury from the victim.

In order for the perceived danger to be “imminent,” generally there must be some overt act on the part of the victim indicative of immediate danger at the time.

In general there is a legal principle that when a party is assaulted in his own home, that party, as a homeowner (or tenant, as the case may be) has the right to use whatever means necessary to repel the aggressor, even to the taking of life.

**Instructing on Other Defenses.** It is a recognized principle that a defendant is entitled to an instruction on any cognizable defense “for which there exists evidence sufficient for a reasonable jury to find in his favor.” *Prince*, 57 V.I. at 411. Instruction on self-defense under 14 V.I.C. § 43 does not necessarily eliminate the necessity for instruction on other defenses, but in a leading case, the trial court, having given an instruction on self-defense under 14 V.I.C. § 43, did not err in failing to instruct the jury under 14 V.I.C. §§ 41, 44, and 293, because the self-defense instruction addressed *the only theory of defense supported by the evidence in the trial record* and this obviated the need to further instruct on other statutes. *Prince v. People*, 57 V.I. at 412-14.

*ALERT:* In *Powell* the Supreme Court collected authorities for the proposition that use of multiple gunshots will not be compatible with self-defense. 2019 V.I. 2.

### **3.11 Self-Defense—Defendant With Fault—Retreat**

If you believe that the defendant was to some degree at fault in provoking or bringing on the [fight; difficulty], but you further believe that:

- (1) (he; she) retreated as far as (he; she) safely could under the circumstances in a good faith attempt to abandon the fight; and
- (2) (he; she) made known (his; her) desire for peace by word or act; and
- (3) (he; she) reasonably feared, under the circumstances as they appeared to (him; her), that (he; she) was in imminent danger of bodily harm; and
- (4) (he; she) used no more force, under the circumstances as they appeared to (him; her), than was reasonably necessary to protect (himself; herself) from the perceived harm,

then (he; she) acted in self-defense, and you shall find the defendant not guilty.

#### **Sources & Authority**

*Powell v. People*, 2019 V.I. 2; *Davis v. People*, 2018 V.I. Supreme LEXIS 23 (V.I. July 27, 2018); *Petric v. People*, 61 V.I. 401 (V.I. 2014); *Fahie v. People*, 59 V.I. 505 (V.I. 2013); *Jackson-Flavius v. People*, 57 V.I. 716 (V.I. 2012); *Prince v. People*, 57 V.I. 399 (VI. 2012)

#### ***Practice Note***

In *Davis* the Supreme Court stated flatly that a first aggressor who did not attempt to withdraw from the confrontation . . . simply was not entitled to an instruction for self-defense.” 2018 V.I. Supreme LEXIS 23 \*19, citing *Prince*, 57 V.I. at 413, where it had noted that the evidence was insufficient to warrant a self-defense instruction where defendant “[w]as the initial instigator and aggressor.”

### **3.13 Right to Arm**

**A person who reasonably believes that another intends to attack (him; her) for the purpose of killing (him; her) or doing (him; her) serious bodily harm has a right to arm (himself; herself) for his own necessary self-protection. In such a case, no inference of malice can be drawn from the fact that (he; she) armed himself.**

#### ***Practice Note***

A right to arm instruction is correctly given only when the threat to the defendant’s life was specific and nearly contemporaneous with the defendant’s action in arming himself.

### **3.15 Self-Defense—Brandishing a Firearm (Right to Threaten Force)**

If you believe from the evidence that the defendant was without fault in provoking or bringing on the incident and if you further believe that the defendant reasonably feared, under the circumstances as they appeared to (him; her), that (he; she) was in danger of being killed or that (he; she) was in danger of great bodily harm, then (his; her) [pointing; holding; brandishing] a firearm was in self-defense and you shall find the defendant not guilty.

### **3.17 Lawful Violence Defense in Assault & Battery Prosecutions**

Violence used to the person does not amount to an assault or an assault and battery if used in self-defense or in defense of another against unlawful violence offered to his person or property. However, where violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose.

#### **Sources & Authority**

14 V.I. Code § 293

*Prince v. People*, 57 V.I. 399 (2012)

#### ***Practice Note***

Under 14 V.I.C. § 293(a)(6) and (b): “[v]iolence used to the person does not amount to an assault or an assault and battery . . . in self-defense or in defense of another against unlawful violence offered to his person or property. . . (b) In all cases mentioned in subsection (a) of this section, where violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose.”

**Covered by Other Instructions?** In a leading case, failure to give an instruction under 14 V.I.C. § 293 was held not to be reversible error where a complete self-defense instruction was given under the self-defense section itself, 14 V.I.C. § 14, *Prince*, 57 V.I. at 415.

### **3.19 Resistance by a Party About to be Injured**

Any person about to be injured may make resistance sufficient to prevent—(1) an illegal attempt by force to take or injure property in (his; her) lawful possession; or (2) an offense against (his; her) person or (his; her) family or some member thereof.

## Sources & Authority

### 14 V.I. Code § 41

*Powell v. People*, 2019 VI 2; *Prince v. People*, 57 V.I. 399 (2012)

### **Practice Note**

Under 14 V.I.C. § 41, “[a]ny person about to be injured may make resistance sufficient to prevent—(1) an illegal attempt by force to take or injure property in his lawful possession; or (2) an offense against his person or his family or some member thereof.

“Section 41 authorizes the use of force to resist attempted harm against one's person, property, family, or some member thereof. *Prince*, 57 V.I. at 412. Under the general provisions 14 V.I.C. § 41, “a defendant is authorized to make resistance sufficient to prevent an offense against him or his family.” *Powell*, 2019 VI 2 ¶ 56.

### **3.21 Justifiable Use of Force**

**Any person is justified in the use of force when resisting:**

- (1) an attempt by another to kill (him; her) or to inflict serious bodily injury upon (him; her); or**
- (2) an unlawful or forcible entry by another into (his; her) residence and (he; she) reasonably believes that there is an imminent threat of harm to (him; her) or (his; her) family.**

**In determining whether a person is justified in the use of justifiable force, you must consider all relevant circumstances including, but not limited to:**

- **time of day;**
- **location;**
- **visibility conditions;**
- **type of weapon, object or instrument; and**
- **brandishing of a firearm or other dangerous or deadly weapon.**

## Sources & Authority

### 14 V.I. Code § 44

*Powell v. People*, 2019 VI 2; *Prince v. People*, 57 V.I. 399 (V.I. 2012)

### **Practice Note**

Under 14 V.I.C. § 44(a), “Any person is justified in the use of force when: (1) the person is resisting an attempt by another to kill him or to inflict serious bodily injury upon him; or (2) the person is resisting an unlawful or forcible entry by another into his residence and he reasonably believes that there is an imminent threat of harm to him or his family.” The Supreme Court observed in *Powell* that while § 44 “does not use the words necessary or sufficient in providing

for justifiable use of force,” subsection (1) provides that “force is justified only in resisting attempted murder or an attempt to inflict serious bodily injury.” 2019 VI 2 ¶57. The Court also noted that under §44(b) “a determination of justifiable use of force . . . requires a consideration of all relevant circumstances including the type of weapon used and the conditions affecting one's ability to see,” thus placing “the same limitations on lawful violence as those in sections 41, 42, 43, and 293.” It concluded that “[j]ustifiable use of force under [§44] is, therefore, limited to only that amount of force necessary to prevent an attempted murder or serious bodily injury. If the force used is disproportionate to the threat posed, the force is unlawful.” 2019 VI 2 ¶57.

Subsections (b) and (c) of 14 V.I.C. § 44 provide:

(b) In determining whether a person is justified in the use of justifiable force, the finder of fact shall consider all relevant circumstances including, but not limited to:

- (1) time of day;
- (2) location;
- (3) visibility conditions;
- (4) type of weapon, object or instrument; and
- (5) brandishing of a firearm or other dangerous or deadly weapon, as defined in Section 2251 of this Title, by the perpetrator.

(c) A person who uses justifiable force while within his residence against another unlawfully in the residence or attempting to unlawfully or forcibly enter the residence shall be presumed to have held a reasonable belief that there is an imminent threat of harm to his person, provided:

- (1) that he knew or had reason to believe that an unlawful and forcible entry had occurred or was about to occur; or
- (2) he knew or had reason to believe that the perpetrator had a dangerous weapon on his person or within his reach.

As briefly summarized by the Supreme Court: “[S]ection 44 declares that the use of force is justified in resisting the attempt by another to kill or injure, or the forcible entry into the residence by another where there is a reasonable belief of imminent threat to person or family. *Prince*, 57 V.I. at 412-13.

**Dangerous Weapons.** A dangerous weapon for purposes of this instruction is defined in 14 V.I.C. § 2251, which lists a blackjack, billy, sandclub, metal knuckles, bludgeon, switchblade knife or gravity knife; or a dagger, dirk, dangerous knife, razor, stiletto, or any other dangerous or deadly weapon.

**Instruction on Other Self-Defense Doctrines.** Such an instruction is not warranted unless there is evidence in the record from which a rational jury could find the defense applicable. In a leading case, failure to give an instruction under 14 V.I.C. § 44 was held not to be reversible error where a complete self-defense instruction was given under the self-defense section itself, 14 V.I.C. § 14, *Prince*, 57 V.I. at 414-15.



### **3.23 Presumption of Reasonable Belief in Imminent Threat**

A person who uses justifiable force while within (his; her) residence against another unlawfully in the residence or attempting to unlawfully or forcibly enter the residence is presumed to have held a reasonable belief that there is an imminent threat of harm to (his; her) person if (he; she) knew or had reason to believe that [an unlawful and forcible entry had occurred or was about to occur; the perpetrator had a dangerous weapon on (his; her) person or within (his; her) reach].

#### **Sources & Authority**

14 V.I. Code § 44

*Powell v. People*, 2019 VI 2; *Prince v. People*, 57 V.I. 399 (2012)

### **3.25 Accident**

Where the defense is that the [homicide; malicious wounding; unlawful wounding; <name other intentional act to which the defense applies>] was an accident, the defendant is not required to prove this fact. The burden is on the People to prove beyond a reasonable doubt that the [homicide; malicious wounding; unlawful wounding; <name other intentional act to which the defense applies>] was not accidental. If, after considering all the evidence, you have a reasonable doubt whether the [homicide; malicious wounding; unlawful wounding; <name other intentional act to which the defense applies>] was accidental or intentional, then you shall find the defendant not guilty.

## **B. INSANITY AND DIMINISHED RESPONSIBILITY DEFENSES**

### **3.51 Insanity**

In this case, with respect to each offense charged, the People must prove beyond a reasonable doubt that the defendant either did not suffer from a mental illness, or was not acting as a result of (his; her)] mental illness when (he; she) committed the charged offense. If the People fail to prove at least one of those issues beyond a reasonable doubt, you must return of verdict of not guilty by reason of insanity.

#### **Sources & Authority**

14 V.I. Code 14

*King v. People*, 67 V.I. 903 (V.I. 2017); *Petric v. People*, 61 V.I. 401 (2014); *Farrell v. People*, 54 V.I. 600 (2011); *Nibbs v. People*, 52 V.I. 276 (V.I. 2009)

### ***Practice Note***

Under Virgin Islands law, “[a]ll persons are capable of committing crimes or offenses except ... persons who are mentally ill and who committed the act charged against them in consequence of such mental illness.” 14 V.I.C. § 14(4). The Instruction above simply tracks that statute.

If a defendant introduces “some evidence” that he was mentally ill and that he committed the charged offense as a result of that illness, the defendant's sanity becomes an element of that offense. *King*, 67 V.I. at 909-10; *Petric*, 61 V.I. at 410 (explaining that a defendant need only introduce “a slight quantum of evidence” to shift this burden): *Nibbs*, 52 V.I. 276 at 284-85.

“With respect to each offense charged, the People must then prove beyond a reasonable doubt that the defendant either did not suffer from a mental illness, or was not acting as a result of his mental illness when he committed the charged offense, *i.e.*, the People must prove beyond a reasonable doubt that the defendant was sane when he or she committed the offense.” *King*, 67 V.I. at 909-10; *Petric*, 61 V.I. at 410, 413; *Nibbs*, 52 V.I. at 291 & n.9;

It was observed decades ago, that while national tests and Model Penal Code provisions have taken hold elsewhere, in the Virgin islands we have a statute, 14 V.I.C. § 14(4), which essentially adopts what is known as the *Durham* rule, named after *Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954). See *Gov't of V.I. v. Downey*, 396 F. Supp. 349, 353-54 (D. V.I. 1975).

**Missing Test?** The V.I. statute appears to require only a focus on causation: did a mental illness cause the conduct charged. *Petric*, 61 V.I. at 408-09. Most other jurisdictions in the United States have adopted insanity standards (and instructions) that require but-for causation, and in addition provide a *test* for the jury to apply in deciding whether a defendant’s mental condition was sufficient to exempt him or her from culpability. For example, the classic *M’Naghten* rule, stated in the disjunctive, is the traditional test for insanity under which a jury is instructed that a defendant is insane if, because of mental disease or defect, he (1) did not understand the nature, character and consequences of his act or (2) he was unable to distinguish right from wrong. Many courts follow the Model Penal Code approach that asks whether the defendant, as a result of a mental disease or defect, either lacks the substantial capacity to appreciate the wrongfulness or criminality of his conduct or lacks the substantial capacity to conform his conduct to the requirements of the law. The Third Circuit in the well-known *Currens* case explained the critical relationship between the mens rea required to convict a defendant of any crime, and the mental illness defense doctrine. *United States v. Currens*, 290 F.2d 751, 771-74 (3d Cir. 1961). The Third Circuit then held in *Gov't of V.I. v. Fredericks*, 578 F.2d 927 (3<sup>rd</sup> Cir. 1978), that it would be compatible with the Virgin Islands insanity statute to instruct the jury that the defendant was insane at the time of the offense if:

**at the time of committing the prohibited act the defendant, as a result of mental disease or defect, [he; she] lacked substantial capacity to conform his conduct to the requirements of the law which he is alleged to have violated.**

578 F.2d at 930-33. However, the Supreme Court of the Virgin Islands expressly rejected both the *M’Naghten* test and the Third Circuit’s approach in *Petric*, 61 V.I. at 408-09.

**Raising the Insanity Defense Sua Sponte.** In *Farrell* the Supreme Court held that a trial judge erred when it sua sponte “imposed” the defense on the defendant. Pursuant to the majority rule, “the Superior Court — upon recognizing that the insanity defense could apply, yet had not been pled — was authorized to conduct an inquiry to determine (1) whether [the defendant] was presently competent to stand trial; (2) if so, whether based on present mental capacity, [he] could intelligently and voluntarily waive the insanity defense, and whether he actually has done so; and, if not, (3) whether the evidence of the defendant’s mental condition at the time of the alleged crime required imposition of the insanity defense. 61 V.I. at 615. Further, in the absence of a statute or precedential local case law addressing this issue, the Court adopted the majority approach nationwide, which prohibits an unpled insanity defense from being imposed on a defendant unless the trial court ascertains that the defendant did not voluntarily and intelligently waive the defense. In *Farrell* that meant that the defendant’s silence is not sufficient to waive a right that is personal to him, and his counsel’s silence when the Superior Court took judicial notice of a psychiatric report did not result in the defendant acquiescing to an insanity defense. 54 V.I. at 614.

**Judicial Notice of Psychiatric Report.** Another error in *Farrell* was the action of the trial court in taking “judicial notice” of the report of a psychiatric examination of the defendant, commenting that “while a trial court may take judicial notice of the existence of a document that has been filed with it, it may not assume, through judicial notice, that the contents of those documents are true unless the other requirements for judicial notice are met, which will not be the case when the document in question purports to evaluate the mental state of a particular individual.” 61 V.I. at 616.

## **2.53 Prosecution’s Burden of Proof**

**On the issue of the defendant’s sanity at the time of this offense, the People have the burden of proving beyond a reasonable doubt either that the defendant did not suffer from a mental illness on the date of the offense, or that the offense was not the consequence of a mental illness. If the prosecution fails to prove one of these issues beyond a reasonable doubt, you shall return a verdict of not guilty by reason of mental illness.**

### **Sources & Authority**

*King v. People*, 67 V.I. 903 (V.I. 2017); *Petric v. People*, 61 V.I. 401 (2014); *Nibbs v. People*, 52 V.I. 276 (V.I. 2009)

### **Practice Note**

**Some Evidence Test.** To satisfy the “some evidence” test, the defense need only introduce “a slight quantum of evidence.” *Petric*, 61 V.I. at 410 (quoting definitions stating that “some

evidence” is “only slight evidence”, and stating: the “some evidence” test requires that there be more than a scintilla but less than that which would compel reasonable doubt as a matter of law.

**Elements of the Offense.** “It does not matter whether the People proved the elements of the charged offenses beyond a reasonable doubt. The defense of not guilty by reason of insanity is essentially an affirmative defense.” *Nibbs*, 52 V.I. at 291. Thus, under Virgin Islands law, once some evidence of insanity is introduced, the People have “the burden of proving beyond a reasonable doubt that the offense was not the consequence of a mental illness.” *Id.*

**Meeting the Prosecution’s Burden.** Although not required, once the defense introduces “some evidence” of mental illness, the “first and most obvious way the People can satisfy its burden of proving the defendant’s sanity at the time of the offense is by introducing its own expert medical testimony to challenge the defense expert’s medical conclusions.” *Petric*, 61 V.I. at 410. The Court cited federal authority for the proposition that no case holds, as a matter of law, that the Government must meet defendant’s psychiatric testimony with psychiatric testimony of its own. But it quoted other authority holding that introduction of a verifying psychiatric examination is “perhaps ... the most trustworthy means of attempting to meet [the] burden” of proving the accused’s sanity). *Id.* at 411. In the leading *Petric* case, the prosecution offered no medical testimony that the defendant was sane at the time of the murders charged and, instead, sought to “discredit” the defense expert’s testimony that the defendant’s actions on the day of the murders were driven by delusional beliefs stemming from an undiagnosed “psychotic disorder,” relying mainly on the passage of time between the events and the subsequent psychiatric evaluation by the defense witness. The only other evidence offered by the prosecution on this issue was the lay testimony of the arresting officers as evidence of the defendant’s mental state at the time of arrest. The Supreme Court, however, stressed that “before a non-expert witness may testify to the sanity of the defendant, the party offering the testimony must show a familiarity with the defendant to clearly indicate that the testimony will be of value in determining the defendant’s sanity, and the conclusion must be based on the witness’s testimony as to specific instances of behavior or conduct near the time of the offense. *Petric*, 61 V.I. at 411-12. But none of the officers testified to having any prior familiarity with the defendant, nor were they capable of testifying to his mental condition before or at the time of the crimes. Accordingly, testimony of the arresting officers provided no evidence from which a reasonable juror could conclude beyond a reasonable doubt that he was sane *at the time of the murders*. Requiring the People to produce evidence bearing on a defendant’s sanity during the “critical time period” — either immediately before or during the commission of the offense — is particularly important in a case where the defendant’s medical expert testified that the defendant was in a “delusional state” before and during the murders. Taken together, the People’s cross-examination of the defense expert, “coupled with the lay testimony of the arresting officers, even when viewed in the light most favorable to the People, was simply insufficient to prove beyond a reasonable doubt that *Petric* was sane at the time of the offenses.” *Id.* at 413.

**Notice of the Defense.** Under V.I. Rule of Criminal Procedure Rule 12.2, a defendant who intends to assert a defense of insanity at the time of the alleged offense “must so notify an attorney for the government in writing within the time provided for filing a pretrial motion, or at any later time the court sets, and file a copy of the notice with the clerk. A defendant who fails to do so cannot rely on an insanity defense.” The Rule also provides that the Superior Court may, “for good cause, allow the defendant to file the notice late, grant additional trial-preparation time, or make other appropriate orders.”

### **3.55 Expert Witnesses**

It is your responsibility to decide whether the defendant was insane at the time the crime was committed. You are not required to accept the opinion of any expert witness as to whether the defendant was sane or insane. You should give the testimony such consideration as you feel it is entitled along with the other evidence in the case.

#### ***Practice Note***

See V.I. Rule of Evidence 704(b).

### **3.57 Effect of Verdict of Not Guilty by Reason of Insanity**

If you find the defendant not guilty by reason of insanity, our mental illness statute requires the court to commit the defendant to a psychiatric forensic unit for custody, care and treatment from which (he; she) shall not be discharged until the court is satisfied that (he; she) has regained (his; her) capacity for judgment, discretion and control of the conduct of (his; her) affairs and social relations.

#### **Sources & Authority**

5 V.I.C. § 3637(a)

*King v. People*, 67 V.I. 903 (V.I. 2017)

#### ***Practice Note***

The plain text of the Virgin Islands Code does not obligate the Superior Court to instruct a jury on the consequences of returning an verdict of not guilty by reason of insanity. See 5 V.I.C. § 3637(a) (if a defendant has raised mental illness as a defense, “the jury shall be instructed, if they find [the defendant] not guilty on that ground, to state that fact in their verdict”). However, the Due Process Clause — which applies to the Virgin Islands by virtue of section 3 of the Revised Organic Act, 48 U.S.C. § 1561 — may require that the Superior Court instruct the jury on the consequences of returning [an NGI verdict “when, in light of the totality of the circumstances, there is a genuine danger that the jury will convict based on something other than the State's lawful evidence, proved beyond a reasonable doubt.” *Delo v. Lashley*, 507 U.S. 272, 278. In *King* the Supreme Court of the Virgin Islands ruled that “the Superior Court should instruct a jury on the consequences of entering a verdict of not guilty by reason of insanity when necessary to ensure that a defendant is adjudged on the People's proof, not on the misapprehension that a defendant will walk free if found not guilty by reason of insanity. 67 V.I. at 909. Otherwise, the words “not guilty” contained in the insanity verdict “invoke the idea that a potentially dangerous defendant will be unconditionally released after trial, while in fact he faces

mandatory corrective proceedings,” and a “juror who feels that a verdict importing freedom for defendant will endanger the community might, out of his sense of social responsibility, be swayed from rational deliberation and be unwilling to weigh properly the evidence of defendant’s mental condition.” *Id.* at 916 (citing cases). “[T]he possible misapprehension of the consequences of an NGI verdict represents a genuine danger that a criminal defendant may be convicted on grounds other than the People’s proof,” and to avoid a “possible miscarriage of justice by imprisoning a defendant who should be hospitalized,” the Superior Court should instruct the jury on the consequences of reaching an NGI verdict. *Id.* at 918.

### **3.61 Intoxication—Voluntary**

*Reserved.*

#### ***Practice Note***

Voluntary intoxication (sometimes referred to as “drunkenness”) never excuses a crime. It is a defense only in capital cases and first degree murder cases when it may negate the existence of premeditation and deliberation. *Case law on this doctrine has not been located in the Virgin Islands* Where a defendant is charged with murder, if it appears that the accused was too drunk to be capable of deliberating and premeditating, then in most jurisdictions he can be convicted only of murder in the second degree.

The fact that the defendant is a habitual drinker with a history of continual drunkenness has no effect on the rule that voluntary drunkenness is no excuse for crime.

## Chapter 4. ABDUCTION (FALSE IMPRISONMENT; KIDNAPPING)

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### **4.01 False Imprisonment or Kidnapping – No Other Offense Charged Based on the Same Incidents or Events**

The defendant is charged with the crime of [false imprisonment; kidnapping]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That against the will of <name of person> the defendant [confined; imprisoned; inveigled] (him; her) within this Territory; [caused (him; her) to be sent out of the Territory]; and
- (2) Defendant did so with the intent to [confine; imprison; inveigle (him; her) in this Territory; cause (him; her) to be sent out of this Territory] against (his; her) will; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>]; and
- (4) Defendant acted without lawful authority.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1051

*Fahie v. People*, 59 V.I. 505 (V.I. 2013); *Gov't of the V.I. v. Berry*, 604 F.2d 221 (3rd Cir. 1979)

## ***Practice Note***

In the Virgin Islands, criminal false imprisonment occurs when someone “without lawful authority confines or imprisons another person within this Territory against his will ... with intent to cause him to be confined or imprisoned in this Territory against his will.” *Fahie*, 59 V.I. at 514, quoting 14 V.I.C. § 1051, which provides:

### **§ 1051. False imprisonment and kidnapping**

Whoever without lawful authority confines or imprisons another person within this Territory against his will, or confines or inveigles or kidnaps another person, with intent to cause him to be confined or imprisoned in this Territory against his will, or to cause him to be sent out of this Territory against his will; and whoever willfully and knowingly sells, or in any manner transfers, for any term, the services or labor of any other person who has been unlawfully seized, taken, inveigled or kidnapped from this Territory to any other state, territory or country, is guilty of kidnapping and shall be imprisoned for not less than one and not more than 20 years. This action shall not apply in any case when a parent abducts his own child.

**Constitutionality.** The V.I. false imprisonment and kidnapping statute has been held *not* unconstitutionally vague. *United States v. John-Baptiste*, 747 F.3d 186 (3d Cir. 2014).

**Statutory Interpretation.** Prior to 1974, § 1051 only addressed the basic situation of kidnapping within the Territory of the Virgin Islands. The 1974 amendment added the material following the semicolon in the statute. The Model Jury Instructions Committee has concluded that it is inconceivable that the intent of the 1974 amendment was to abolish the crime of kidnapping in the Virgin Islands, and to require that in all kidnapping cases the People show that the defendant sold the services of the victim in another state, territory or country. Thus, while the drafting of the statute could be improved, the Committee understands it to say that there are two ways that the crime can be committed: one, by confining the victim in the Territory, and the other by selling the services or labor of the victim outside the Territory. The use of “and whoever” in the amended language following the semicolon in the statute helps confirm that understanding, since it indicates that an additional class of crime is being added to the “whoever” used for decades before 1974 in the first part of the statute, criminalizing the basic offense of confining or imprisoning the victim in the Territory. For these reasons, this Chapter of the Model Jury Instructions sets forth the “basic” crime of kidnapping here in Instruction 4.01, while the sale-of-services-outside-the-Territory version of the offense is covered in Instruction 4.03. The sale of services version of the offense is also related to the crime of Human Trafficking made illegal under modern legislation, and addressed in Chapter 34 of these Model Instructions.

**Inveiglement.** The statute twice uses the term “inveigle,” which means to persuade by dishonest means. In an appropriate case, where such dishonest persuasion is used, either the term “inveigle” or its commonly understood meaning, may be used in the instruction as indicated. See, e.g., *Black’s Law Dictionary*, defining “inveigle” as “[t]o lure or entice through deceit or insincerity.” A separate instruction could be given to provide the jury with this understanding of the term “inveigle.”

**Child of the Defendant.** If there is any issue raised by the defendant concerning whether the alleged victim of the kidnapping is his child, the final sentence of § 1051 becomes applicable, and the court should add a fifth paragraph to the numbered elements in the instruction:

**(5) That <name of person> is not a child of the defendant.**



#### **4.03 Kidnapping for Human Trafficking** [for charges under § 1051]

The defendant is charged with the crime of kidnapping for the purpose of selling or transferring the services or labor of any person. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant unlawfully [seized; took; inveigled, kidnapped] <name of person> against (his; her) will; and
- (2) Defendant sold or transferred in any manner, for any period of time, the services or labor of <name of person>; and
- (3) Defendant caused <name of person> to be sent out of this Territory to any other Territory, state or country; and
- (4) Defendant did so:
  - (A) willfully, meaning on purpose or willingly, and
  - (B) knowingly, meaning that defendant knew what (he; she) was doing, not necessarily knowing it was illegal; and
- (5) Defendant acted without lawful authority.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1051; 14 V.I. Code § 131 – 154

*Fahie v. People*, 59 V.I. 505 (V.I. 2013); *Gov't of the V.I. v. Berry*, 604 F.2d 221 (3rd Cir. 1979)

#### ***Practice Note***

In the Virgin Islands, criminal false imprisonment occurs when someone “without lawful authority confines or imprisons another person within this Territory against his will ... with intent to cause him to be confined or imprisoned in this Territory against his will.” *Fahie*, 59 V.I. at 514, quoting 14 V.I.C. § 1051, which provides:

##### **§ 1051. False imprisonment and kidnapping**

Whoever without lawful authority confines or imprisons another person within this Territory against his will, or confines or inveigles or kidnaps another person, with

intent to cause him to be confined or imprisoned in this Territory against his will, or to cause him to be sent out of this Territory against his will; and whoever willfully and knowingly sells, or in any manner transfers, for any term, the services or labor of any other person who has been unlawfully seized, taken, inveigled or kidnapped from this Territory to any other state, territory or country, is guilty of kidnapping and shall be imprisoned for not less than one and not more than 20 years. This action shall not apply in any case when a parent abducts his own child.

**2018 Human Trafficking Act.** In 2018 the Legislature enacted the Virgin Islands Uniform Prevention of and Remedies for Human Trafficking Act, 14 V.I.C. §§ 131 – 154. Under 14 V.I.C. § 133, guilt on charges of human trafficking does not require proof of the traditional elements of kidnapping or false imprisonment. Instead, the offense of trafficking an individual is committed if a person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of forced labor in violation of § 134 or sexual servitude in violation of § 135. A separate chapter of Jury Instructions for these Human Trafficking Act cases has been developed by the Committee, and may be found in *Chapter 34* of these Model Jury Instructions.

**Willful and Knowing Conduct.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. The term “knowingly” is defined in § 41 as meaning “personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there are no specialized definitions of these terms in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definitions adopted by the Legislature in § 41 is the source of the language in Element (4) of the above Instruction.

**Inveiglement.** The statute twice uses the term “inveigle,” which means to persuade by dishonest means. In an appropriate case, where such dishonest persuasion is used, either the term “inveigle” or its commonly understood meaning, may be used in the instruction as indicated. See, e.g., *Black’s Law Dictionary*, defining “inveigle” as “[t]o lure or entice through deceit or insincerity.”

**Child of the Defendant.** If there is any issue raised by the defendant concerning whether the alleged victim of the kidnapping is his child, the final sentence of § 1051 becomes applicable, and the court should add a sixth paragraph to the numbered elements in the instruction:

**(6) That <name of person> is not a child of the defendant.**

#### **4.05 False Imprisonment or Kidnapping – For Use When Other Related Crimes are also Charged**

The defendant is charged with the crime of [false imprisonment; kidnapping] as well as the separate crime of *<name of other crime>*. For the crime of [false imprisonment; kidnapping] the People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That against the will of *<name of person>* the defendant [confined; imprisoned] (him; her); [caused (him; her) to be sent out of the Territory]; and
- (2) Defendant did so with the intent to [confine; imprison (him; her)]; [cause (him; her) to be sent out of this Territory] **against his will;** and
- (3) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*]; and
- (4) Defendant acted without lawful authority; and
- (5) The [seizure; detention; transportation] of *<name of person>* in this case was more than merely incidental to the crime of *<name of other crime>*.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1051

*Fahie v. People*, 59 V.I. 505 (V.I. 2013); *Gov't of the V.I. v. Berry*, 604 F.2d 221 (3rd Cir. 1979)

#### ***Practice Note***

In the Virgin Islands, criminal false imprisonment occurs when someone “without lawful authority confines or imprisons another person within this Territory against his will ... with intent to cause him to be confined or imprisoned in this Territory against his will.” *Fahie*, 59 V.I. at 514, quoting 14 V.I.C. § 1051, which provides:

## § 1051. False imprisonment and kidnapping

Whoever without lawful authority confines or imprisons another person within this Territory against his will, or confines or inveigles or kidnaps another person, with intent to cause him to be confined or imprisoned in this Territory against his will, or to cause him to be sent out of this Territory against his will; and whoever willfully and knowingly sells, or in any manner transfers, for any term, the services or labor of any other person who has been unlawfully seized, taken, inveigled or kidnapped from this Territory to any other state, territory or country, is guilty of kidnapping and shall be imprisoned for not less than one and not more than 20 years. This action shall not apply in any case when a parent abducts his own child.

**Separate Offense of Kidnapping or False Imprisonment.** The Supreme Court of the Virgin Islands commented in *Fahie* that it agreed with the Third Circuit’s analysis in *Berry*, and that it has decided to “adopt its four-factor test for determining whether a confinement is incidental to the commission of another crime or constitutes the separate offense of false imprisonment under 14 V.I.C. § 1051.” *Fahie*, 59 V.I. at 515. The statement of those factors in *Berry* is:

(1) the duration of the detention or asportation; (2) whether the detention or asportation occurred during the commission of a separate offense; (3) whether the detention or asportation which occurred is inherent in the separate offense; and (4) whether the asportation or detention created a significant danger to the victim independent of that posed by the separate offense.

604 F.2d at 227. This four-factor test also governs the lesser included offense of false imprisonment. *Id.* at 227 n.13. The Virgin Islands Supreme Court in *Fahie* agreed with the observation that not every “asportation or detention” rises to the level of false imprisonment, however. *Id.* at 227. Because the statutes defining these offenses are silent regarding the distance of the asportation or the duration of the detention or confinement necessary for kidnapping or false imprisonment, the Third Circuit reasoned that without a requirement that the asportation or detention meet some threshold level, “persons who have committed such substantive crimes as robbery or assault — which inherently involve the temporary detention or seizure of the victim — will suffer the far greater penalties prescribed by the kidnapping statutes.” *Id.* at 226. In *Fahie* the Virgin Islands Supreme Court agreed with this reasoning and resolved to apply the four-factor test for determining whether a confinement is incidental to the commission of another crime or constitutes the separate offense of false imprisonment under 14 V.I.C. § 1051. For convenience, this Chapter of the Instructions includes a separate instruction embodying these four factors, Instruction 4.07 below, which should be used with Instructions 4.05 and 4.09 to advise the jury of the considerations in determining whether the detention of the victim was more than merely incidental to another underlying crime.

**Constitutionality.** The V.I. false imprisonment and kidnapping statute has been held not unconstitutionally vague. *United States v. John-Baptiste*, 747 F.3d 186 (3d Cir. 2014).

#### **4.07 Factors for Consideration on Whether Kidnapping was Merely Incidental to Another Crime**

In considering whether the [seizure; detention; transportation] of <name of person> in this case was more than merely incidental to the crime of <name of other crime> you may consider:

- (1) the length of time of the [seizure; detention; asportation]; and
- (2) whether it occurred before, during or after the commission of the crime of <name of other crime>; and
- (3) whether the [seizure; detention; asportation] which occurred was a regular part of the crime of <name of other crime>; and
- (4) whether the [seizure; asportation; detention] itself created a significant danger to the victim independent of the danger posed by the crime of <name of other crime>.

#### **Sources & Authority**

14 V.I. Code § 1051

*Fahie v. People*, 59 V.I. 505 (V.I. 2013); *Gov't of the V.I. v. Berry*, 604 F.2d 221 (3rd Cir. 1979)

#### **Practice Note**

These factors, originally articulated by the Third Circuit, were adopted by the Supreme Court of the Virgin Islands in *Fahie*, as indicated in the Practice Note to the preceding Instruction.

#### **4.09 Abduction—For Ransom; Extortion; Robbery**

The defendant is charged with the crime of abduction for [ransom; extortion; robbery]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That on or about <date> in [this judicial division; <name of judicial division>] without lawful authority the defendant by [force; threat] did [seize; take; transport; detain; hide] <name of person> against (his; her) will; and
- (2) Defendant did so with the intent [to deprive <name of person> of (his; her) personal liberty; to withhold or conceal <name of person> from <name of person or authority legally entitled to his charge>]; and

- (3) **Defendant did so with the intent to** [obtain money or other benefit of value; rob the victim]; **and**
- (4) **The** [seizure; detention; transportation] **of** <name of person> **in this case was more than merely incidental to the crime of** [ransom; extortion; robbery].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

#### **14 V.I. Code § 1052**

*Fahie v. People*, 59 V.I. 505 (V.I. 2013); *Gov't of the V.I. v. Martinez*, 620 F.3d 321 (3d Cir. 2010); *Smith v. Gov't of the V.I.*, 2009 U.S. Dist. LEXIS 35131 (D. V.I. 2009); *Gov't of the V.I. v. Aliment*, 820 F.2d 635 (3d Cir. 1987); *Gov't of the V.I. v. Ventura*, 775 F.2d 92, 96-98 (3d Cir. 1985)

### ***Practice Note***

**History of the Statute.** A useful recap of the history of the statute, including the 1983 addition of the separate rape provision set forth in subpart (b) of § 1052, is provided in *Fahie*, 59 V.I. at 515 & n.4. The current text of the section is as follows:

#### **§ 1052. Kidnapping for ransom, extortion, robbery or rape**

(a) Any person who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any individual by any means whatsoever with intent to hold or detain, or who holds or detains, such individual for ransom, reward or to commit extortion or to exact from any person or entity any money or valuable thing, or any person who kidnaps or carries away any individual to commit robbery, or any person who aids or abets any such act, is guilty of kidnapping for ransom and shall be imprisoned for life.

(b) Whoever abducts, takes or carries away any person by force or threat with the intent to commit rape is guilty of kidnapping and shall be imprisoned for not less than 15 years and shall not be eligible for parole until he has served at least one-half of sentence imposed.

**Use of the *Berry* Four-Factor Incidental Test.** *Fahie* explains (59 V.I. at 515 & n.4) that all four of the *Berry* factors are applicable when the other crimes are charged under § 1052(a). Thus Instruction 4.07 should be used with Instruction 4.09 to advise the jury of the factors to consider in determining whether the kidnapping was more than merely incidental to the other underlying crime.

**Kidnapping “Component” of the Crime.** The Third Circuit has stated that “[w]ith respect to the kidnapping component of the crime, we must consider (1) the duration and distance of

asportation of the victim, and (2) whether the asportation created a significant danger to the victim independent of that posed by a separate ongoing offense.” *Martinez*, 620 F.3d at 329-30, citing *Ventura*, 775 F.2d at 96-98, where the court had explained that the harm of being dragged “through the bushes by the ear while [the defendant was] carrying a gun” is significant danger, and independent of the rape committed). *Martinez* later held that the threat posed by presence of a firearm and the defendant’s dangerous driving clearly presented a danger independent of any harm posed by the alleged sexual assault. 620 F.2d at 331.

**Initially Voluntary.** In *Martinez*, the Third Circuit commented: “No language exists in § 1052(b) that would absolve the abduction of an unconsenting victim merely because the victim's initial interaction with the perpetrator was voluntary. We hold — as have the majority of courts considering similar proposed interpretations of the federal kidnapping statutes — that § 1052(b) reaches the abduction of an individual during an otherwise consensual encounter if consent is withdrawn at some point after the encounter commences.” 620 F.3d at 330.

**Threat Element.** Construing the Virgin Islands statute, the Third Circuit has found that the “force or threat” element of the crime was satisfied by threatening the victim that the perpetrator had a gun. The court said: “This threat alone established the element of force or threat, whether the gun itself was ever introduced or not,” citing other federal authority holding that a kidnapping offense requires a defendant to use “some means of force — actual or threatened, physical or mental — ... so that the victim is taken, held and transported against his or her will.” *Martinez*, 620 F.3d at 331.

**Asportation or Duration.** Courts interpreting § 1052 have concluded that evidence of asportation from “one environment ... to another” over a distance of approximately 70 feet is sufficient “asportation” of a victim. *Ailment*, 820 F.2d at 638. A leading federal case applying the V.I. statute has explained that dragging victim indoors, over a period of several minutes and for a distance of 88 feet was sufficient degree of asportation. *Ventura*, 775 F.2d at 98.

**Proof of Sexual Acts to Show Motive.** The federal court interpretations of the V.I. crime have repeatedly upheld admitting proof of sexual conduct of the defendant during the events, to show motive for the kidnapping. *United States v. Sriyuth*, 98 F.3d 739, 747 (3d Cir. 1996); *United States v. Bradshaw*, 690 F.2d 704, 708 (9th Cir. 1982).

#### **4.11 Abduction—For Rape**

The defendant is charged with the crime of abduction for the purpose of rape. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant by [force; threat] did [seize; take; transport; detain; hide] <name of person> against (his; her) will; and**
- (2) Defendant did so with the intent to rape (him; her); and**
- (3) The [seizure; detention; transportation] of <name of person> in this case was more than merely incidental to the crime of rape considering:
  - (A) the length of time of the [seizure; detention; asportation]; and**
  - (B) whether the [seizure; asportation; detention] itself created a significant danger to the victim independent of the danger posed by the crime of rape.****

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

##### **14 V.I. Code § 1052**

*Fahie v. People*, 59 V.I. 505 (V.I. 2013); *Gov't of the V.I. v. Martinez*, 620 F.3d 321 (3d Cir. 2010); *Smith v. Gov't of the V.I.*, 2009 U.S. Dist. LEXIS 35131 (D. V.I. 2009); *Gov't of the V.I. v. Alment*, 820 F.2d 635 (3d Cir. 1987); *Gov't of the V.I. v. Ventura*, 775 F.2d 92, 96-98 (3d Cir. 1985)

#### ***Practice Note***

**History of the Statute.** A useful summary of the history of the statute, including the 1983 addition of the rape provision, is provided by the V.I. Supreme Court decision in *Fahie*, 59 V.I. at 515 & n.4.

**Use of two *Berry* Incidental Test Factors.** *Fahie* explains (*id.* at n.4) that only the first and fourth of the *Berry* factors are applicable when the crime charged is abduction for the purpose of rape. As a result, the “incidental” aspect of this instruction is shorter than the other instructions available when an defendant is charged with kidnapping as well as another offense arising from the same conduct. For simplicity and ease of use these two factors are set forth here in Instruction 4.11 in element (3). If desired, a separate Instruction can be crafted to present these



two factors, using the style of Instruction 4.07 but limiting it to the two factors that apply in rape-related cases.

**Initially Voluntary.** In *Martinez*, the Third Circuit commented: “No language exists in § 1052(b) that would absolve the abduction of an unconsenting victim merely because the victim's initial interaction with the perpetrator was voluntary. We hold — as have the majority of courts considering similar proposed interpretations of the federal kidnapping statutes — that § 1052(b) reaches the abduction of an individual during an otherwise consensual encounter if consent is withdrawn at some point after the encounter commences.” 620 F.3d at 330.

**Threat Element.** Construing the Virgin Islands statute, the Third Circuit has found that the “force or threat” element of the crime was satisfied by threatening the victim that the perpetrator had a gun. The court said: “This threat alone established the element of force or threat, whether the gun itself was ever introduced or not,” citing other federal authority holding that a kidnapping offense requires a defendant to use “some means of force — actual or threatened, physical or mental — ... so that the victim is taken, held and transported against his or her will.” *Martinez*, 620 F.3d at 331.

**Asportation or Duration.** Courts interpreting § 1052 have concluded that evidence of asportation from “one environment ... to another” over a distance of approximately 70 feet is sufficient “asportation” of a victim. *Ailment*, 820 F.2d at 638. A leading federal case applying the V.I. statute has explained that dragging a victim indoors, over a period of several minutes and for a distance of 88 feet was sufficient degree of asportation. *Ventura*, 775 F.2d at 98.

**Proof of Sexual Acts to Show Motive.** Federal court interpretations of the V.I. crime have repeatedly upheld admitting proof of sexual conduct of the defendant during the events, to show motive for the kidnapping. *United States v. Sriyuth*, 98 F.3d 739, 747 (3d Cir. 1996); *United*

## Chapter 5. AIDING & ABETTING; ACCESSORIES; MISPRISION OF FELONY

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### 5.01 Principals Acting Together

If two or more people persons commit a crime, and the People prove beyond a reasonable doubt all of the elements of the crime against each person, each such person shall be found guilty of the commission of such crime.

### 5.03 Aiding and Abetting

The defendant is charged with the crime of aiding and abetting the crime of *<name of crime>*. The People have the burden of proof to establish beyond a reasonable doubt each of the following elements of that offense:

- (1) The crime of *<name of crime identified above>* has in fact been committed; and
- (2) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant knew of that crime and attempted to facilitate it; and
- (3) Defendant had the intention to facilitate that crime.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

#### 14 V.I.C. § 11(a)

*Davis v. People*, 69 V.I. 600 (2017); *Freeman v. People*, 61 V.I. 537 (V.I. 2014); *Hughes v. People*, 59 V.I. 1015 (V.I. 2013); *Todman v. People*, 59 V.I. 675 (V.I. 2013); *Phillip v. People*, 58

V.I. 569 (2013); *Ostalaza v. People*, 58 V.I. 531 (2013); *Boston v. People*, 56 V.I. 634 (2012); *Fontaine v. People*, 56 V.I. 571, 578 (V.I. 2012); *People v. Clarke*, 55 V.I. 473 (2011); *Brown v. People*, 54 V.I. 496 (2010); *Nanton v. People*, 52 V.I. 466, 484 (V.I. 2009)

### ***Practice Note***

Under 14 V.I.C. § 11(a), “[w]hoever commits a crime or offense or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.” This text does not expressly state that a defendant charged with aiding and abetting must have the specific intent to facilitate it, but that requirement is clear in case law. *E.g.*, *Davis*, 69 V.I. at 608; *Hughes*, 59 V.I. at 1020.

Establishing the offense of aiding and abetting requires the People to prove (1) that the substantive crime has been committed, and (2) the defendant knew of the crime and attempted to facilitate it. *Brown*, 54 V.I. at 500. In addition, the People must prove that the “defendant associated himself with the venture, that he participated in it as something he wished to bring about, and that he sought by his words or action to make it succeed.” *Nanton*, 52 V.I. at 484. “Thus, liability for aiding and abetting someone else in the commission of a crime requires the specific intent of facilitating the crime, and mere knowledge of the underlying offense is not sufficient for conviction.” *Clarke*, 55 V.I. at 479 (quoting federal case law).

**Specific Intent.** In *Davis*, the Supreme Court made it clear that a conviction for aiding and abetting cannot stand unless the People prove beyond a reasonable doubt that the defendant “had the specific intent to facilitate” the underlying crime. 69 V.I. at 611-12. *See Brown*, 54 V.I. at 505, 509, citing authority for the proposition that when intent is an element of the crime charged, “a person may be convicted on a theory of aiding and abetting if she participates with either the requisite intent, or with knowledge the principal possesses the required intent.” Thus, the Court quoted cases holding that “an alleged aider and abettor can be held criminally liable as a principal ... if it is shown that the aider and abettor knew that the perpetrator ... possessed the required intent or that the aider and abettor himself or herself possessed the required intent.” The People may show that the defendant “encouraged or helped the perpetrator” to establish the requisite intent. *Brown*, 54 V.I. at 508; *Nanton*, 52 V.I. at 484.

**Direct or Circumstantial Evidence.** The People need not prove intent with direct evidence, and the prosecution typically establishes the element of criminal intent through circumstantial evidence, see *Phillip*, 58 V.I. at 585-86, and the jury may infer intent from that evidence. *Davis*, 69 V.I. at 611-12; *Ostalaza*, 58 V.I. at 549. For example, the Court held in one well-known case that discharging a firearm in a public place demonstrates sufficient intent to aid and abet reckless endangerment. *Freeman*, 61 V.I. at 542-43 (finding sufficient evidence to convict defendant as both a principal and an aider-and-abettor of reckless endangerment).

**Commission of the Underlying Crime.** Virgin Islands law holds that the first element of the crime of aiding and abetting requires the People to prove that the underlying, substantive crime has been committed. *Davis*, 69 V.I. at 612; *Todman*, 59 V.I. at 684; *Brown*, 54 V.I. at 505.

**Prosecution’s Theory.** Generally, “a person charged as a primary actor can be convicted as an aider and abettor.” *Hughes*, 59 V.I. at 1019. So long as the government proves beyond a reasonable doubt the facts establishing aiding and abetting the crimes of the principal, a

conviction will be affirmed. *Boston*, 56 V.I. at 641-44 & nn.9-10. At times the Supreme Court has noted that uncertainty over the People’s theory can be problematic, as in *Fontaine*, where it was “highly unclear whether the People intended to charge [the defendant] as a principal who personally committed the murder and other crimes, as a principal by virtue of being an aider and abettor . . . or both.” The Court observed: “ This distinction is not academic, for the elements the People must prove to establish culpability as an aider and abettor differ from the elements necessary to establish liability as a principal actor.” 56 V.I. at 578.

### **5.05 Aiding & Abetting Unauthorized Use of Firearm in Committing Another Crime**

The defendant is charged with the crime of aiding and abetting the unlawful use of a firearm in the commission of *<name of other crime>*. The People have the burden of proof to establish beyond a reasonable doubt that the following elements of that offense:

- (1) The crime of *<name of other crime>* has been committed; and
- (2) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant knew of that crime and attempted to facilitate it; and
- (3) Defendant knew that another participant in that crime possessed a firearm; and
- (4) Defendant intended to aid or assist in the use of a firearm in that crime.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

*Davis v. People*, 69 V.I. 600 (2017); *People v. Clarke*, 55 V.I. 473 (2011)

#### ***Practice Note***

See the note to Instruction 4.03, the general Instruction on Aiding and Abetting.

Where the People charge a defendant with aiding and abetting the unauthorized use of a firearm during the commission of a crime of violence, the People must link the alleged aider and abettor to the firearm. See *Clarke*, 55 V.I. at 483, *Davis*, 69 V.I. at 610.

In *Davis* the Supreme Court cited numerous federal cases for the principle that “[t]he link to the firearm is necessary because the defendant is punished as a principal for ‘using’ a firearm in relation to [another] offense, and therefore must facilitate in the ‘use’ of the firearm rather than simply assist in the crime underlying the [use or carrying of a firearm] violation.”) 69 V.I. at 609-10 (finding it sufficient that one brother drove the other to the shooting scene in his own car, and that the brother exited the vehicle with a firearm in his hands, satisfying the doctrine that “once knowledge is established, merely transporting [the principal] and the firearm to the scene of the crime amounts to facilitation”) *Compare Clarke*, where – even viewing the evidence presented in the light most favorable to the People, it was clear that the prosecution failed to present “substantial” evidence that the defendant aided, abetted, counseled, commanded, induced or procured the other individual in the unauthorized possession of a firearm during the commission of a crime of violence, in that case first degree murder. The Court cited foreign authority for the proposition that – in order to be convicted of aiding and abetting the use or carrying of a firearm – the defendant “must act with the knowledge or specific intent of advancing the ‘use’ of the firearm in relation to the underlying offense,” and that in addition to requiring proof of knowledge or intent for a conviction of aiding and abetting, “there must also be proof that the defendant performed some affirmative act relating to the firearm.” The Court stressed that the link to the firearm is “necessary because the defendant is punished as a principal for ‘using’ a firearm in relation to [another] offense, and therefore must facilitate in the ‘use’ of the firearm rather than simply assist in the crime underlying the [use or carrying of a firearm] violation.” *Clarke*, 55 V.I. at 483 (concluding that because the People presented no evidence that the defendant knew or facilitated the other actor’s possession of the firearm, the trial court correctly granted Clarke’s motion for a judgment of acquittal).

## **5.07 Accessory After the Fact**

**The defendant is charged with being an accessory after the fact to the crime of <name of crime>. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That some person other than the defendant committed the crime of <name of crime>; and**
- (2) The crime of <name of crime> was completed; and**
- (3) Defendant knew that the person had committed the crime of <name of crime>; and**
- (4) On or about <date> in [this judicial division; <name of judicial division>] the defendant took some action with a purpose or plan to hinder or prevent the other person’s arrest, trial, or punishment.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

#### **14 V.I. Code § 12(a)**

*Hughes v. People*, 59 V.I. 1015 (2013); *Browne v. People*, 55 V.I. 931, 937-38 (V.I. 2011)

### ***Practice Note***

Title 14, § 12(a) of the Virgin Islands Code defines an accessory after the fact as someone who, “knowing that a crime or offense has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment.” *Hughes*, 59 V.I. at 1022; *Browne*, 55 V.I. at 937-38. It appears that the Court thought a getaway driver who refused to stop for police, triggering a high-speed vehicular chase, was more in the nature of an accessory after the fact of the crime than a co-principal or aider and abettor. *Hughes*, 59 V.I. at 1022.

**Knowledge Requirement Explained.** In *Browne* the Supreme Court explained the important features of the knowledge requirement of 14 V.I.C. § 12, stating: “Mere knowledge that the underlying offense occurred is insufficient. Rather, the People must prove that the defendant had actual knowledge of the crime and of the principal's participation in it.” 55 V.I. at 936-37. In the circumstances of *Browne*, the fact that the defendant knew that a shooting had occurred in housing community and that the police suspected that two men were involved, “does not prove she had actual knowledge that they had committed the shooting. It is therefore insufficient to meet § 12(a)'s knowledge requirement. The People were required to prove not only that she was aware of the shooting at the time she gave the statement, but also that she knew that [the two men] had committed the shooting in order for her to be guilty as an accessory after the fact. Merely making a false statement to police was insufficient to meet the knowledge requirement of § 12(a). 55 V.I. at 937.

**Action Element.** The Court in *Browne* quoted with approval from federal case law holding that the elements of the crime of being an accessory after the fact are “(1) commission of a specified offense by some person, (2) the defendant's knowledge of the crime's commission and the principal's participation in it, and (3) the defendant's assistance to the principal with the specific purpose or plan to hinder or prevent the principal's apprehension, trial, or punishment.” *Id.*

## **5.09 Misprision of a Felony**

The defendant is charged with the crime of misprision of a felony. For this offense the People must prove beyond a reasonable doubt the following elements of that crime:

- (1) The crime allegedly concealed was actually completed by its perpetrator; and**
- (2) Defendant had knowledge of that fact; and**
- (3) Defendant took an affirmative step to willfully conceal the crime; and**
- (4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

*Percival v. People*, 61 V.I. 187 (2014)

### ***Practice Note***

While all three states that formerly had misprision of felony statutes have now repealed them, the Supreme Court observed in *Percival* that misprision of a felony is still a chargeable crime in the Territory, codified in 14 V.I.C. § 13, and stating in its entirety that “[w]hoever, having knowledge of the actual commission of a felony, willfully conceals it from the proper authorities,” is guilty of the crime. 61 V.I. at 193-94 (rejecting a claim that the statute is unconstitutionally vague).

**Concealing the Felony.** The Supreme Court has clarified that the statutory phrase, “[w]hoever, having knowledge of the actual commission of a felony, willfully conceals it from ...” must refer to “commission of a felony,” and not the word “knowledge.” Looking at 14 V.I.C. § 13, the Court explained that the first phrase clearly specifies the type of person targeted by the statute: persons who know that a felony has been committed. The second phrase of § 13 specifies what those persons must do in order to be convicted under § 13: willfully conceal the felony from the authorities. Reading § 13 to criminalize “the mere possession of certain knowledge — knowledge possessed accidentally and undesired — knowledge which may indeed have been acquired through some malevolent person” goes against the plain meaning of § 13. Thus, the Court held, “§ 13 unambiguously criminalizes only the willful concealment of a felony from the authorities.” *Percival*, 61 V.I. at 195-96.

**Affirmative Act of Concealment Required.** In 1957, the Virgin Islands Legislature adopted § 13 based on the federal misprision of a felony statute, which has led the Court to hold that it is appropriate to consider federal court interpretations of 18 U.S.C. § 4, which has substantially similar language. Thus the Supreme Court of the Virgin Islands has noted that the majority of federal courts require the prosecution to prove that the defendant took some action to aid or protect the perpetrator of the underlying felony, citing *Brownsburg v. Hayes*, 408 U.S. 665, 696 n.36 (1972) (holding that a conviction under § 4 “require[s] both knowledge of a crime and some affirmative act of concealment or participation” (collecting cases)). Thus the Virgin Islands Court has concluded that the Virgin Islands statute also requires that the defendant take some action to conceal the felony. It notes that courts have interpreted the word “conceal” in the federal statute to require evidence that the defendant took *some affirmative act* to prevent the authorities from discovering the felony, and the fact that the Virgin Islands Legislature added the specific statutory term “willful” before “conceal” indicates that it agreed with and accepted the federal courts' interpretation that the federal statute requires some affirmative act of concealment. *Percival*, 61 V.I. 199.



## Chapter 6. ARSON

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### 6.01 Arson Definitions

As used in the instructions I will give you regarding the crime of arson, “arson” means the [willful and malicious] burning of a building [of another] with intent to destroy it;

“bomb” means any explosive, incendiary or poison gas device that may be detonated under specified conditions.

“building” means any vehicle, house, edifice, structure, vessel, or other erection, capable of affording shelter to human beings, or appurtenant to or connected with an erection so adapted;

“building of another” means a building, or any part thereof, which at the time of the burning, was rightfully in the possession of, or was actually occupied by, a person other than the accused, and does not mean that a person other than the accused shall have had ownership in the building;

“burns” or “burning” or “burned” means applying fire so as to take effect upon any part of the substance of the building and does not mean that the building shall have been destroyed; and

“chemical, biological or radioactive substance” means any such substance which by its composition or use may be harmful to human life.

“inhabited building” means any building which has usually been occupied by any person lodging therein at night.

#### Sources & Authority

14 V.I. Code § 251

#### ***Practice Note***

While the arson definitions statute, 14 V.I.C. § 251, defines a number of terms and concepts, to avoid confusing the jury *only those terms that will be mentioned in the substantive instructions that will be given in the case* should be read from the listing of definitions.

Both “willful and malicious” and “of another” are placed in brackets as options in the definitions above, since some arson charges use these requirements but others do not, so the definition must be edited to fit the degree of arson charged.

### **6.03 Arson in the First Degree**

**The defendant is charged with the crime of arson in the first degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) That on or about** *<date>* **in** [this judicial division; *<name of judicial division>*] **the defendant** [started a fire; caused an explosion];

**(2) Defendant**

*\* Select element(s) charged in this case \**

... **intended to destroy or damage a** [building; vehicle; house; structure; vessel; *<name of construction capable of affording shelter to human beings>*]; [*<name of construction appurtenant to a building, vehicle, house, vessel, structure, or other construction capable of affording shelter to human beings>*] **with that** [fire; explosion];

... **was engaged in the commission of the felony of** *<name of crime>* **at the time of the** [fire; explosion];

**and**

**(3) Either**

*\* Select element(s) charged in this case \**

... **the** [building; vehicle; house; structure; vessel; *<name of other construction capable of affording shelter to human beings>*; *<name of construction appurtenant to a building, vehicle, house, vessel, structure, or other construction capable of affording shelter to human beings>*] **was inhabited or occupied at the time;**

... **the defendant had reason to believe that it was inhabited or occupied at the time;**

... **it was a structure where persons are normally present** [such as: jails, prisons or detention centers; hospitals, nursing homes or other health care facilities; department stores, office buildings, business establishments, churches or educational institutions during normal hours of occupancy; or other similar structures];

... **one or more persons sustained serious physical injury as a result of the fire or explosion or in the firefighting as a result thereof.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the three elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the three elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 252**

*Walters v. Gov't of the V.I.*, 172 F.R.D. 165 (D. V.I. 1997)

### ***Practice Note***

While the arson definitions statute, 14 V.I.C. § 251, provides a generic definition of arson as meaning “the willful and malicious burning of a building of another with intent to destroy it,” the first degree statutory section, § 252, does not expressly impose a requirement that the People prove that the burning (or explosion) was done willfully and maliciously. Since § 252 is the specific section for first degree arson – and the Legislature left the concept of malice in the second degree statute, a fourth requirement for the basic jury instruction above requiring that the People show that the burning or bombing was done maliciously and willfully is not included in the listed elements. As most recently amended in 2013, § 252(a) provides:

#### **§ 252. Arson in the first degree**

(a) A person is guilty of arson in the first degree when, with intent to destroy or damage a building, or while in the commission of any felony, he starts a fire or causes an explosion, and:

(1) the building is inhabited or occupied, or the person has a reason to believe the building may be inhabited or occupied; or

(2) it is a structure where persons are normally present, such as: jails, prisons or detention centers; hospitals, nursing homes or other health care facilities; department stores, office buildings, business establishments, churches or educational institutions during normal hours of occupancy; or other similar structures; or

(3) any other person sustains serious physical injury as a result of the fire or explosion or the firefighting as a result thereof.

*ALERT:* There is almost no case law on the crime of arson in the Virgin Islands and, unfortunately, some of the case law was issued prior to the first degree arson statute taking its modern form in 2013. The penalties available for both adult and juvenile arson offenders are set forth in subsection (b) of § 252.

## **6.05 Arson in the Second Degree**

The defendant is charged with the crime of arson in the second degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant [started a fire; caused an explosion] in the [building; vehicle; house; structure; vessel; <name of other construction capable of affording shelter to human beings>; <name of construction appurtenant to a building, vehicle, house, structure, vessel, or other construction capable of affording shelter to human beings>] of another;**
- (2) (He; She) acted with malice, meaning intentionally and without just cause or excuse, consciously violating the law; and**
- (3) (He; She) intended to destroy the [building; vehicle; house; structure; vessel; <name of other construction capable of affording shelter to human beings>; <name of construction appurtenant to a building, vehicle, house, structure, vessel, or other construction capable of affording shelter to human beings>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty of arson of an occupied structure.

If you find that the People have failed to prove beyond a reasonable doubt one or more of the elements of the above crime, then you shall find the defendant not guilty.

### **Sources & Authority**

**14 V.I. Code § 252**

*Walters v. Gov't of the V.I.*, 172 F.R.D. 165 (D. V.I. 1997)

### **Practice Note**

*ALERT:* under 14 V.I.C. § 253 the intent specified in the statute is to destroy the building – not merely to damage it (a concept used in § 252 but not § 253). Title 14 § 253 provides:

### § 253. Arson in the second degree

Whoever maliciously burns any building of another with intent to destroy it under circumstances not amounting to arson in the first degree, shall be imprisoned not more than 10 years.

Note also that the arson definitions statute, 14 V.I.C. § 251, defines arson to mean “the willful and malicious burning of a building of another with intent to destroy it.” However, the second degree section, § 253 – which requires proof of malice – does not expressly impose a requirement that the People prove that the burning (or explosion) was done willfully. Since § 253 is the specific section for second degree arson – and the Legislature did not amend that statute in 2013 when the first degree section was rewritten – there is no requirement included in the basic jury instruction above requiring that the People show that the burning or bombing was done willfully as a listed element.

**Second Degree Arson as a Lesser Included Offense.** Prior to the 2013 re-writing of the first degree arson statute, the federal district court held: “[A]rson in the second degree is not a lesser included offense” of arson in the first degree. *Walters*, 172 F.R.D. at 169, stating:

Arson in the second degree differs from arson in the first degree in that it not only requires the “intent to destroy,” but also requires the burning of any “building of another” [and] 14 V.I.C. § 251 differentiates between a “building” and “building of another” -- a distinction clearly made in the different arson charges. In light of these differences, arson in the second degree is not a lesser included offense of arson in the first degree.

**Malicious Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “malice” or “maliciously” mean “the doing of a wrongful act, intentionally, without just cause or excuse; a conscious violation of the law to the prejudice of another.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

## 6.09 Incendiarism

**The defendant is charged with the crime of incendiarism. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant burned [any bridge exceeding \$50 in value; any building or vessel not the subject of arson; any growing or standing crop, grass or tree; any fence not the property of such person]; and**
- (2) (He; She) acted with malice, meaning intentionally and without just cause or excuse, consciously violating the law.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty of the crime as charged.**

**If you find that the People have failed to prove beyond a reasonable doubt one or more of the elements of the above crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**14 V.I. Code § 254**

### **Practice Note**

*ALERT:* case law interpreting § 254 has not been located. The statute itself provides in relevant part:

#### **§ 254. Incendiarism**

(a) Whoever willfully and maliciously burns any bridge exceeding \$50 in value, or any building or vessel, not the subject of arson, or any growing or standing crop, grass or tree, or any fence not the property of such person, shall be imprisoned not more than 10 years.

(b) Whoever wilfully and unlawfully burns or damages or destroys or injures any person or any real or personal property by the use of any explosives shall be guilty of a felony and shall be imprisoned for not less than five (5) years and not more than ten (10) years.

**Malicious Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “malice” or “maliciously” mean “the doing of a wrongful act, intentionally, without just cause or excuse; a conscious violation of the law to the prejudice of another.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

## Chapter 7. ASSAULT & BATTERY

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### 7.01 Assault

Any use of any unlawful violence upon the person of another with intent to injure that person is an assault, regardless of the means or the degree of violence used.

#### Sources & Authority

14 V.I. Code § 292

*Estick v. People*, 62 V.I. 604 (2015)

#### ***Practice Note***

Elements of the common law term “battery” are incorporated into the statutory offense of assault as well as the offense of assault and battery. *Gov't of the V.I. v. Knowles*, 20 V.I. 94 (V.I. Terr. Ct. 1983).

**Inferring Intent to Injure.** Intent is ordinarily a question of fact, and in assault and battery cases, the defendant's intent may be inferred from the facts and circumstances surrounding the act, the situation of the parties, the nature and extent of the violence, the acts and declarations of the parties at the time and the objects to be accomplished. There may be extreme circumstances where the force applied in an assault and battery is clearly excessive or so cruel as to be shocking to every right-thinking man, and intent to injure will be inferred as a matter of law. *Gov't of the V.I. v. Frett*, 14 V.I. 315 (V.I. Terr. Ct. 1978).

### **7.03 Verbal Provocation**

No verbal provocation justifies an assault and battery.

#### **Sources & Authority**

14 V.I. Code § 294

### **7.05 Lawful Violence**

Violence used against a person does not amount to an assault or an assault and battery—

*\* Select element(s) alleged in this case \**

- ... in the exercise of the right of moderate restraint or correction given by the law to the parents over the child, the guardian over the ward, the master over his apprentice or minor servant, whenever the former be authorized by the parent or guardian of the latter so to do;
- ... for the preservation of order in a meeting for religious or other lawful purposes, in case of obstinate resistance to the person charged with the preservation of order;
- ... the preservation of peace, or to prevent the commission of offenses;
- ... in preventing or interrupting an intrusion upon the lawful possession of property, against the will of the owner or person in charge thereof;
- ... in making a lawful arrest and detaining the party arrested, in obedience to the lawful orders of a magistrate judge or court, and in overcoming resistance to such lawful order;
- ... in self-defense or in defense of another against unlawful violence offered to his person or property.

In all cases where violence is permitted to achieve a lawful purpose, only that degree of force may be used as is necessary to effect such purpose.

#### **Sources & Authority**

14 V.I. Code § 293

### **7.11 First Degree Assault**

The defendant is charged with the crime of assault in the first degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant intended to injure *<name of victim>*; and



**(2) Defendant:**

*\* Select element(s) charged in this case \**

... used; attempted by any means to use] any amount of unlawful violence against (him; her);

... made a threatening gesture showing in itself an immediate intention coupled with an ability to use unlawful violence against (him; her);

**and**

**(3) Defendant**

*\* Select element(s) charged in this case \**

... intended to commit murder;

... administered poison to <name of victim>;

... intended to commit [rape; sodomy; mayhem; robbery; larceny] [upon; of] <name of victim>;

**and**

**(4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 295**

*Williams v. People*, 56 V.I. 821 (V.I. 2012), *Estick v. People*, 62 V.I. 604 (V.I. 2015); *Simmonds v. People*, 59 V.I. 480 (V.I. 2013) *Phillip v. People*, 58 V.I. 569 (V.I. 2013); *Fontaine v. People*, 56 V.I. 571 (V.I. 2012).

### ***Practice Note***

**Success of the Assault.** The Supreme Court has held that defendant can “be guilty of first-degree assault regardless of whether he missed or actually succeeded in killing the target of the assault.” *Phillip v. People*, 58 V.I. 569, 592 (V.I. 2013); *Fontaine v. People*, 62 V.I. 643 (2015).

**Examples.** See *Simmonds*, 59 V.I. at 488-89 (finding sufficient evidence for first-degree assault when the defendant fired shots at the victim); *Phillip*, 58 V.I. at 592 (stating that a jury could have convicted the defendant of first-degree assault from evidence that the defendant pointed firearm in a threatening manner with the ability to injure and kill victim).

**Same Victim.** It has been held by the Third Circuit that an essential element of crime of assault with intent to commit rape under § 295 is that the assault must be on the intended rape victim. *Gov't of the V.I. v. Greenidge*, 600 F.2d 437 (3d Cir. 1979).

**Multiple Offenses.** In a case where the defendant threatened the victim with a weapon in order to rob her place of employment, he simultaneously committed first-degree robbery by threatening the use of a dangerous weapon in the course of committing robbery, and first-degree assault by assaulting her with in the intent to commit a robbery. He could not be punished under both statutes. *George v. People*, 59 V.I. 368 (V.I. 2013). See also *Williams v. People*, 56 V.I. 821 (V.I. 2012).

**Doctrine of Transferred Intent.** The Third Circuit, construing 14 V.I.C. § 295, has held that the doctrine of transferred intent does not apply to first-degree assault under Virgin Islands statutory law. The Court noted that a necessary element of the crime of assault with intent to commit rape is that the assault has been committed on the same person whom the defendant intended to rape; because both provisions state that the specific intent to commit an underlying crime be directed against the individual assaulted, it is appropriate to extend this teaching to the subsection dealing with assault with intent to commit murder. *Gov't of the V.I. v. Davis*, 561 F.3d 159 (3d Cir. 2009).

**Defining Murder.** It has been held that failure of judge at assault trial to define “murder” or “intent to commit murder” did not amount to clear error, where judge included all essential elements of first degree assault in her charge to jury, and also appraised jurors of their responsibility to determine whether defendant specifically intended to murder victim. *Rivera v. Gov't of the V.I.*, 42 V.I. 203 (D.V.I. 2000).

### **7.13 First Degree Assault—Domestic Violence**

The defendant is charged with the crime of assault in the first degree as an act of domestic violence. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant assaulted <name of victim>; and

(2) Defendant

*\* Select element(s) charged in this case \**

... intended to commit murder;

... administered poison to <name of victim>;

... intended to commit [rape; sodomy; mayhem; robbery; larceny]

[upon; of] <name of victim>;

**and**

**(3) <name of victim> was**

*\* Select element(s) charged in this case \**

... defendant's [spouse; former spouse; parent; child; <role of any other person related to the defendant by blood or marriage>;

... a present or former member of the defendant's household;

... a person with whom the defendant has a child in common;

... a person who is, or has been, in a sexual or otherwise intimate relationship with the defendant;

**and**

**(4) This conduct took place on or about <date> in** [this judicial division; <name of judicial division>].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

14 V.I. Code § 295

## **7.21 Second Degree Assault**

The defendant is charged with the crime of assault in the second degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant assaulted <name of victim> by:**

*\* Select element(s) charged in this case \**

... mingling poison with any food, drink, or medicine, with intent that the same shall be taken by any human being, to his injury;

... poisoning any [spring; well; reservoir of water];

... [strangling; attempting to strangle] any person in an act of domestic violence;

... [placing; throwing; causing to be placed or thrown] on any person [vitriol; corrosive acid; pepper; hot water; chemical of any nature] with intent to [injure the flesh; disfigure the [body; clothes]] of such person;

and

- (2) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 296

### 7.31 Assault of School Personnel

The defendant is charged with the crime of assault of school personnel. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant intended to injure *<name of victim>*; and

- (2) Defendant

*\* Select element(s) charged in this case \**

... used; attempted by any means to use] any amount of unlawful violence against (him; her);

... made a threatening gesture showing in itself an immediate intention coupled with an ability to use unlawful violence against (him; her);

and

- (3) *<name of victim>* was then a

*\* Select element(s) charged in this case \**

... principal; assistant principal; superintendent; assistant superintendent; counselor; teacher; substitute teacher;

... [paraprofessional; aide; monitor] of the Department of Education;

... [program manager; director] of education programs in a [career academy; alternative education institution; *<name of other educational institution>*];

and

- (4) *<name of victim>* was then engaged in the lawful discharge of the duties of (his; her) office; and
- (5) It was [known; declared] to the defendant that *<name of victim>* was an employee of [the Department of Education; *<name of other career or educational institution>*] discharging an official duty; and
- (6) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 296a

### ***Practice Note***

*ALERT:* This subsection does not apply to students enrolled in any program in which the Department of Education is involved, unless the program is an adult education program and the student is eighteen years of age or older.

## **7.35 Assault of a Peace Officer**

The defendant is charged with the crime of assault of a peace officer. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant intended to injure *<name of victim>*; and
- (2) Defendant

*\* Select element(s) charged in this case \**

... [used; attempted by any means to use] any amount of unlawful violence against (him; her);

... made a threatening gesture showing in itself an immediate intention coupled with an ability to use unlawful violence against (him; her);

**and**

- (3) *<name of victim>* was a peace officer; and
- (4) *<name of victim>* was engaged in the lawful discharge of (his; her) duties of such office; and

- (5) It was [known; declared] to the defendant that <name of victim> was a peace officer discharging an official duty; and
- (6) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 297(b)

#### **7.41 Third Degree Assault**

The defendant is charged with the crime of assault in the third degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant intended to injure <name of victim>; and
- (2) Defendant

*\* Select element(s) charged in this case \**

... [used; attempted by any means to use] any amount of unlawful violence against (him; her);

... made a threatening gesture showing in itself an immediate intention coupled with an ability to use unlawful violence against (him; her);

**and**

- (3) Defendant

*\* Select element(s) charged in this case \**

... intended to commit a felony;

... used a deadly weapon in the assault;

... [premeditated the assault and used a means calculated to inflict great bodily harm; inflicted serious bodily injury] on <name of victim>];

**and**

**(4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 297**

*Jackson-Flavius v. People*, 57 V.I. 716 (V.I. 2012).

### ***Practice Note***

**Deadly Weapon.** The Court commented in *Jackson-Flavius* that “whether a weapon is deadly depends upon two factors: (1) what it intrinsically is, and (2) how it is used. If almost anyone can kill with it, it is a deadly weapon when used in a manner calculated to kill. 57 V.I. at 724, quoting *Gov’t of the V.I. v. Robinson*, 29 F.3d 878, 886 (3d Cir. 1994). The Court has stated that “deadly weapon” and “dangerous weapon” may be used interchangeably. *Jackson-Flavius*, 57 V.I. at 725; *Christopher v. People*, 57 V.I. 500, 513 (V.I. 2009).

## **7.45 Third Degree Assault – Domestic Violence**

**The defendant is charged with the crime of assault in the third degree as an act of domestic violence. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant intended to injure <name of victim>; and**

**(2) Defendant**

***\* Select element(s) charged in this case \****

... [used; attempted by any means to use] any amount of unlawful violence against (him; her);

... made a threatening gesture showing in itself an immediate intention coupled with an ability to use unlawful violence against (him; her);

**and**

**(3) Defendant**

*\* Select element(s) charged in this case \**

... intended to commit a felony;  
... used a deadly weapon in the assault;  
... [premeditated the assault and used a means calculated to inflict great bodily harm; inflicted serious bodily injury] on <name of victim>];

**and**

**(4) <name of victim> was**

*\* Select element(s) charged in this case \**

... defendant's [spouse; former spouse; parent; child; <role of any other person related to the defendant by blood or marriage>];  
... a present or former member of the defendant's household;  
... a person with whom the defendant has a child in common;  
... a person who is, or has been, in a sexual or otherwise intimate relationship with the defendant;

**and**

**(5) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

**Sources & Authority**

**14 V.I. Code § 297**

*Davis v. People*, 2018 V.I. Supreme LEXIS 23 (July 27, 2018)

***Practice Note***

**Circumstances Not Amounting to First or Second Degree Assault.** In *Davis*, the Supreme Court dispelled any notion that the phrasing of the third degree assault statute limiting its application to circumstances not amounting to an assault in the first degree amounts to an element of the third degree charge, and needed to be explained in a jury instruction. Instead, the Court said, viewed in its entirety, § 297 constitutes “not merely a recitation of the substantive elements of third degree assault, but a directive that the Superior Court sentence a defendant



within a particular range if, and only if, two conditions are met: first, that the defendant has committed an assault of the type specified in subsections (1)-(4); and second, that the assault in question does not rise to the level of first or second degree assault, which would instead require that the defendant be sentenced under § 295 or § 296, respectively.” Thus, read in the full context of the statute, the language “under circumstance not amounting to an assault in the first or second degree” *does not* establish an additional, substantive element of the offense, but rather constitutes a condition precedent to the Superior Court’s application of the sentencing range prescribed in § 297. Thus the sole effect of the quoted language is to clarify that a defendant found guilty of both third degree assault and first (or second) degree assault, for the same act, is subject to sentencing under § 295 (or § 296) and not § 297. Indeed, the statutory revision notes accompanying § 297 confirm that, in 1957, the language quoted above was substituted for other pre-existing language “to make it clear that the punishment prescribed by this section did not apply to any assault with intent to commit any of the felonies dealt with in section 295 and 296 of this title.” *Davis*, 2018 V.I. Supreme LEXIS 23 at \*16-18.

## **7.55 Aggravated Assault & Battery**

**The defendant is charged with the crime of aggravated assault and battery. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant intended to injure <name of victim>; and**

**(2) Defendant**

*\* Select element(s) charged in this case \**

... [used; attempted by any means to use] any amount of unlawful violence against (him; her);

... made a threatening gesture showing in itself an immediate intention coupled with an ability to use unlawful violence against (him; her);

**(3) and**

*\* Select element(s) charged in this case \**

... <name of victim> was an officer in the lawful discharge of the duties of his office, and it was [known; declared] to the defendant that <name of victim> was an officer discharging an official duty;

... the assault took place in [a court of justice; any place of religious worship; any place where persons are assembled for the purpose of innocent amusement];

... defendant went into the house of a private family and there committed the assault and battery;

- ... defendant was a person of robust health, and *<name of victim>* was aged or decrepit;
- ... defendant was an adult male and *<name of victim>* was a [female; child];
- ... defendant was an adult female and *<name of victim>* was a child;
- ... defendant used [a whip; a cowhide; a cane; an instrument; a means] which inflicts disgrace upon the person assaulted;
- ... defendant committed the assault while being in disguise;
- ... defendant knew that *<name of victim>* was a [teacher; person employed in any school] and such [teacher; other person employed by any school] is [upon grounds of a school or grounds adjacent thereto; in any part of a building used for school purposes];
- ... defendant knew that *<name of victim>* was [a caseworker; an investigator; an employee] of [the Department of Health; the Department of Human Services; *<name of any agency providing outreach services>*] and *<name of victim>* was [upon the grounds of a public aid office or grounds adjacent thereto; in any part of a building used for public aid purposes; upon the grounds of a home of a public aid applicant, recipient or any other person being interviewed or investigated in the discharge of (his; her) duties, or on grounds adjacent thereto; in any part of a building in which a public aid applicant, recipient, or other such person resides or is located];

**and**

**(4) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

14 V.I. Code § 298

*ALERT:* The portion of 14 V.I.C. § 298(5) which reads, “being an adult male, upon the person of a female” does not satisfy the “intermediate” or “heightened” judicial standard of equal protection review. Accordingly, that offending portion of § 298(5) must be stricken and deemed unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. *People v. McGowan*, 2012 V.I. LEXIS 4 (Jan. 11, 2012); *People v. Simmonds*, 2012 V.I. LEXIS 24 (June 11, 2012).

## **7.57 Aggravated Assault & Battery—Domestic Violence**

The defendant is charged with the crime of aggravated assault and battery as an act of domestic violence. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant intended to injure *<name of victim>*; and

(2) Defendant

*\* Select element(s) charged in this case \**

... [used; attempted by any means to use] any amount of unlawful violence against (him; her);

... made a threatening gesture showing in itself an immediate intention coupled with an ability to use unlawful violence against (him; her);

and

(3) *\* Select element(s) charged in this case \**

... *<name of victim>* was an officer in the lawful discharge of the duties of his office, and it was [known; declared] to the defendant that *<name of victim>* was an officer discharging an official duty;

... the assault took place in [a court of justice; any place of religious worship; any place where persons are assembled for the purpose of innocent amusement];

... defendant went into the house of a private family and there committed the assault and battery;

... defendant was a person of robust health, and *<name of victim>* was aged or decrepit;

... defendant was an adult male and *<name of victim>* was a [female; child];

... defendant was an adult female and *<name of victim>* was a child;

... defendant used [a whip; a cowhide; a cane; an instrument; a means] which inflicts disgrace upon the person assaulted];

- ... defendant committed the assault while being in disguise;
- ... defendant knew that *<name of victim>* was a [teacher; person employed in any school] and such [teacher; other person employed by any school] is [upon grounds of a school or grounds adjacent thereto; in any part of a building used for school purposes];
- ... defendant knew that *<name of victim>* was [a caseworker; an investigator; an employee of [the Department of Health; the Department of Human Services; *<name of any agency providing outreach services>*] and *<name of victim>* was [upon the grounds of a public aid office or grounds adjacent thereto; in any part of a building used for public aid purposes; upon the grounds of a home of a public aid applicant, recipient or any other person being interviewed or investigated in the discharge of (his; her) duties, or on grounds adjacent thereto; in any part of a building in which a public aid applicant, recipient, or other such person resides or is located];

**and**

**(4) *<name of victim>* was**

- ... defendant's [spouse; former spouse; parent; child; *<role of any other person related to the defendant by blood or marriage>*;
- ... a present or former member of the defendant's household;
- ... a person with whom the defendant has a child in common;
- ... a person who is, or has been, in a sexual or otherwise intimate relationship with the defendant;

**and**

**(5) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 298**

*ALERT:* The portion of 14 V.I.C. § 298(5) which reads, “being an adult male, upon the person of a female” does not satisfy the “intermediate” or “heightened” judicial standard of equal protection review. Accordingly, that offending portion of § 298(5) must be stricken and deemed unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. *People v. McGowan*, 2012 V.I. LEXIS 4 (Jan. 11, 2012); *People v. Simmonds*, 2012 V.I. LEXIS 24 (June 11, 2012).

## **7.61 Simple Assault and Battery**

The defendant is charged with the crime of simple assault and battery. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant intended to injure <name of victim>; and**

**(2) Defendant**

*\* Select element(s) charged in this case \**

... [used; attempted by any means to use] any amount of unlawful violence against (him; her);

... made a threatening gesture showing in itself an immediate intention coupled with an ability to use unlawful violence against (him; her);

**and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

**14 V.I. Code § 299**

## Chapter 8. ATTEMPTS AND SOLICITATIONS

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### 8.01 Attempt to Commit (name of crime)

The defendant is charged with the crime of attempted *<name of crime>*. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant intended to commit *<name of crime>*; and
- (2) Defendant did a direct act toward the commission of the *<name of crime>* which amounted to the beginning of the actual commission of the *<name of crime>*; and
- (3) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

#### 14 V.I.C. § 331

*People v. Roberts*, 2019 V.I. Super 20; *Motta v. Virgin Islands*, 2004 U.S. Dist. LEXIS 25112 at \*8-9 (D.V.I. Nov. 30, 2004); *Parson v. Gov't of the V.I.*, 167 F. Supp. 2d 857 (D.V.I. App. Div. 2001); *Cheatham v. Gov't of V.I.*, 30 V.I. 296 (D.V.I. App. Div. July 21, 1994); *Government of V.I. v. Albert*, 18 V.I. 21, 24 (D.V.I. 1980); Model Penal Code § 5.01(1)(c)

### Practice Note

The crime of attempt consists of an intent to do an act or bring about certain consequences which in law would amount to a crime and an act in furtherance of that attempt which goes

beyond mere preparation. *Albert*, 18 V.I. 21. The standard for determining attempt liability requires proof that the perpetrator took a substantial step toward completion of the underlying crime; a "substantial step" requires a showing that: (1) the perpetrator bore an intent to do an act or bring about certain consequences which in law would amount to a crime; and (2) the perpetrator did an act in furtherance of that attempt which goes beyond mere preparation. Under Virgin Islands law, one who unsuccessfully attempts to commit an offense is subject to criminal liability for such attempt. See 14 V.I.C. § 331. Though not defined in our statutes, the standard for determining attempt liability has been judicially defined to require proof that the perpetrator took a substantial step toward completion of the underlying crime. See e.g., *Government of Albert*, 18 V.I. at 24.

Federal courts attempting to apply Virgin Islands law have adopted the following two-prong test for determining whether a defendant's acts constituted a "substantial step" for the purpose of attempt liability: 1) the perpetrator bore an intent to do an act or bring about certain consequences which in law would amount to a crime; and 2) the perpetrator did an act in furtherance of that attempt which goes beyond mere preparation. See *Albert*, 18 V.I. at 24 (quoting *LaFave & Scott*, *Criminal Law* § 59, at 423); see also *Parson*, 167 F. Supp. 2d 857 (citing *Cheatham*, 30 V.I. 296; Model Penal Code § 5.01 (1) (c) (1985)).

The court in *Motta* further noted that intent for these purposes is a question of fact which may be inferred from the conduct of the parties under the circumstances; it can rarely be proven through direct evidence. See *Government of V.I. v. Lake*, 362 F.2d 770, 5 V.I. 594 (3d Cir. 1966). However, the prosecution must adduce objective, unequivocal facts which permit a reasonable inference of criminal intent. See *United States v. Everett*, 700 F.2d 900, 908-09 (3d Cir. 1983) (noting that attempt liability may not be based merely on one's thoughts, desires, or motives, through indirect evidence, without reference to any objective fact). To support an inference of intent, the defendant's "acts should be unique rather than so commonplace that they are engaged in by persons not in violation of the law." *Id.*; *United States v. Cruz-Jiminez*, 977 F.2d 95 (3d Cir. 1992).

As the federal court in *Motta* has observed, given the varying standards, what constitutes a substantial step defies universal definition or demarcation. 2004 U.S. Dist. LEXIS 25112 at \*7-9. See *United States v. Earp*, 84 Fed. Appx. 228, 232-34, 2004 WL 46617, \*4-6 (3rd Cir. 2004). Thus, whether a defendant's conduct constituted a substantial step toward commission of the underlying crime is a factual determination based on the circumstances of each case, the nature of the substantive offense, and the defendant's conduct. See *id.* (citing *United States v. Crowley*, 318 F.3d 401, 408 (2d Cir. 2003) ("Determining whether particular conduct constitutes a substantial step is 'so dependent on the particular factual context of each case that, of necessity, there can be no litmus test to guide the reviewing courts'").

**Attempted Murder.** There are numerous decisions simply declaring, without discussing the applicable test, that there was sufficient evidence in the particular records to sustain a verdict of guilty of attempt. For example, where -- shooting the victim the first time -- the defendant walked in his direction and fired two more rounds into his buttocks and back. *Velazquez v. People*, 65 V.I. 312 (V.I. 2016).

**The Crime of Attempted Rape.** An instruction given to the jury in the *Motta* case advised them: "In order to find the defendant guilty of committing the crime of attempted rape in the first degree, the government must prove beyond a reasonable doubt that the mental processes of the defendant, or another person whom the defendant aided and abetted, passed from the stage of

thinking about the crime of rape in the first degree, to actually intending to commit that crime and that the physical process of the defendant, or another person whom the defendant aided and abetted, went beyond and passed from the state of mere preparation to some firm, clear, and undeniable action to accomplish that intent.” The court further instructed – with preliminary language that could be adapted for other offenses:

A defendant may be found guilty of attempting to commit a crime even though he did not actually do all of the acts necessary in order to commit the crime. A defendant may not be found guilty, however, of attempting to commit any crime merely by thinking about it or even by making some plans or some preparation for the commission of a crime.

The difference between conduct which is an attempt in violation of the law and conduct which does not violate the law, is what is referred to as a “substantial step” towards the commission of a crime.

In determining whether or not the defendant took a “substantial step” towards the commission of a crime, you must consider all of the evidence admitted in the case concerning that defendant and the alleged commission of that crime.

The touchstone of an attempt crime is the absence of a completed crime which the defendant intended to commit and which he took steps toward committing. Intent may be proved by direct or circumstantial evidence from which the fact finder may draw reasonable inferences regarding the defendant's mental state, and the jury was so advised. There is no formula for determining what conduct sufficiently crosses the line for the purpose of attempt liability; rather, the determination of what constitutes a substantial step is to be made based on the facts and circumstances of each case and the crime. However, in the rape context, the determination of whether the defendant has taken a substantial step toward commission of the crime focuses “on what the person has done,” or the course of conduct intended to culminate in the rape, rather than on “what remains to be done” to complete the crime. Thus, it has been said that:

The overt act that indicates a specific intent to commit rape must reach far enough toward accomplishing the desired result . . . . It need not be the last proximate act to the consummation of the offense attempted to be perpetrated, but must approach sufficiently near it to stand either as the first or some subsequent step in the direct movement towards commission of the offense.

Discussion in the *Motta* opinion notes that many national authorities express the view that an attempted rape “does not begin with the act of penetration, but with the primary attack on the female, made for the purpose of carrying out the intent and . . . this intent may be formed at the very moment of the attack.” Proof of an attempt to rape, therefore, does not require actual touching or attempted penetration of the victim's genitalia, in the face of other evidence of an intent to commit that crime. (citing caselaw from other jurisdictions finding that a substantial step was made toward rape, despite the fact that defendant and victim remained clothed and fact that defendant did not attempt to touch victim's genitalia, where defendant ripped victim's shirt and bra, unzipped her pants and threatened to kill her).

**Attempts to commit Other Specific Crimes.** The legislature has enacted special provisions for particular crimes. There are subject-specific statutes addressing:



- attempts to commit sabotage, 14 V.I.C. § 1903
- attempts and conspiracy, 14 V.I.C. § 609, and
- attempts to evade or defeat tax obligations, 33 V.I.C. § 95 and § 1521

**Attempting One Crime But Succeeding Only to Commit Another.** The Superior Court has noted that one way to construe the statutes is to read 14 V.I.C § 331 s criminalizing an attempt to commit a crime and § 332 as criminalizing the crime that is actually accomplished, since an attempt to commit one crime does not always result in the commission of another crime. But if a crime is actually accomplished, “whether greater or lesser in guilt,” 14 V.I.C. § 332, then the defendant must be punished for that crime, “notwithstanding” that it also constituted an attempt to commit “another and different offense.” *Id.* The Superior Court concluded, however, that “[a]nother way to construe the statutes is to read them in harmony, namely that, “notwithstanding” whether someone attempts to commit one crime, if he “accomplishes the commission of another and different offense, whether greater or lesser in guilt,” he must also be punished for the crime committed. *People v. Roberts*, 2019 V.I. Super 20 ¶¶ 57-59.

### **8.03 Withdrawal from Attempt to Commit a Crime**

**It is a defense to the crime of attempted <name of crime> if the defendant abandoned (his; her) attempt to commit the offense or otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of (his; her) criminal purpose.**

**Renunciation is not complete and voluntary where the defendant failed to complete the crime because of unanticipated difficulties, unexpected resistance, a decision to postpone the crime to another time, or circumstances known by the defendant that increased the probability of being apprehended.**

**If you find that the defendant proved by a preponderance of the evidence that (he; she) abandoned (his; her) attempt to commit the offense or otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of (his; her) criminal purpose, you should find (him; her) not guilty of Attempted <name of crime>.**

**If the defendant failed to prove by a preponderance of the evidence that (he; she) abandoned (his; her) attempt to commit the offense or that (he; she) otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of (his; her) criminal purpose, you should find (him; her) guilty of attempted <name of crime> if all the elements of the charge have been proven beyond a reasonable doubt by the People.**

### **8.05 Attempt—Intent**

The intent required to be proved in an attempted crime is the specific intent in the person's mind to commit the particular crime for which the attempt is charged. In determining whether the intent has been proved, you may consider the conduct of the person involved and all the circumstances revealed by the evidence.

### **8.07 Attempt—Failure to Commit Crime**

It is not a defense to attempted *<name of crime>* that [the defendant voluntarily withdrew before actually committing the *<name of crime>*; some other person or thing prevented *<name of crime>* from being committed].

### **8.09 Attempt—Impossibility**

It is no defense that it was impossible for the defendant to have committed the intended crime because of facts or circumstances unknown to him. It is sufficient if the defendant's actions would have resulted in the completed crime if the facts or circumstances had been as he believed them to be.

## Chapter 9. BRIBERY

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### 9.01 Bribing a Public Official

The defendant is charged with the crime of bribing a public officer. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [gave; offered; caused to be given or offered] [a bribe; any money, property, or value of any kind; any promise or agreement to give or offer any money, property, or value of any kind] to *<name of person>*; and
- (2) *<name of person>* was at the time a [public officer; person performing any of the functions of a public office; person elected, appointed or designated to thereafter perform any of the functions of a public office]; and
- (3) Defendant's intent was to influence *<name of person>* in respect to any [act; decision; vote; opinion; *<name of other similar action>*] in the exercise of the powers or functions which (he; she) had or may have; and
- (4) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 406

## Practice Note

**Constitutionality.** The federal district court has held that the Virgin Islands general bribery statute is not unconstitutionally vague, since the words “gives,” “offers,” “bribe,” and “public officer” were all common words, with commonly understood meanings or discernable definitions. In addition, the statute is not unconstitutionally overbroad, since it does not proscribe protected speech, and reasonable jurors could conclude at trial that offers of cash and of vehicle were bribes, not bona fide campaign contributions. *United States v. Tutein*, 122 F. Supp. 2d 575 (D.V.I. 2000).

### 9.03 Public Official Soliciting or Receiving a Bribe

The defendant is charged with the crime of soliciting or receiving a bribe. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant was at the time a [judicial officer; judicial employee; public officer; public employee]; and
- (2) Defendant [asked for; received] from another person any [payment; thing of value; gratuity; reward; promise of a payment, thing of value, gratuity or reward] for doing any official act; and
- (3) The [payment; thing of value; gratuity; reward] was not authorized by law; and
- (4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 403

## Practice Note

**Officers Covered.** The Code Advisory Committee has reported in the Legislative History Notes to the 1957 revision of this statute, that the Words “judicial or other public officer or employee” were substituted for former coverage term, “judicial officer,” for the express purpose of extending the penalty provided to all public servants.

## **9.05 Offering or Giving Bribes to a Judicial Officer**

The defendant is charged with the crime of bribing a judicial officer. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) **The defendant** [gave; offered; caused to be given or offered] [a bribe; any money, property, or value of any kind; any promise or agreement to give or offer any money, property, or value of any kind] **to** *<name of person>*; **and**
- (2) *<name of person>* **was at the time a** [judicial officer; juror; commissioner; referee; arbitrator; person who may be authorized by law to hear or determine any question or controversy]; **and**
- (3) **Defendant intended to influence** (him; her) **in respect to any** [vote; opinion; decision] **upon any matter or question which is or may be brought before** (him; her) **for decision; and**
- (4) **This conduct took place on or about** *<date>* **in** [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any of the above elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 401

## **9.07 Acceptance of Bribe by Judicial Officer**

The defendant is charged with the crime of asking for or receiving a bribe while serving as a judicial officer. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) **The defendant was at the time a** [judicial officer; juror; commissioner; referee; arbitrator; person authorized by law to hear or determine any question or controversy; public officer or employee]; **and**
- (2) **Defendant** [asked for; received; agreed to receive] **from another person any** [payment; thing of value; gratuity; reward]; promise of payment, thing of value, gratuity or reward]; **and**

- (3) Defendant had an agreement or understanding that (his; her) [vote; opinion; decision] upon any matter or question which is or may be brought before (him; her) for decision, would be influenced thereby; and
- (4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt either or both of the above elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 402

## 9.09 Offering or Giving Bribes to Witnesses

The defendant is charged with the crime of offering a bribe to a witness. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [gave; offered; promised to give or offer] any [payment; thing of value; gratuity; reward;] to a [witness; person about to be called as a witness] in a [judicial; arbitration; <name of similar proceeding>] proceeding; and
- (2) The defendant had an agreement or understanding that the testimony of such witness would be influenced thereby; and
- (4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt either or both of the above elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

14 V.I. Code § 404

### **9.11 Solicitation or Receipt of Bribes by Witnesses**

The defendant is charged with the crime of asking for or receiving a bribe as a witness. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) **The defendant was** [a witness; about to be called as a witness] **in a** [judicial; arbitration; <name of similar proceeding>] **proceeding;**  
**and**
- (2) **Defendant** [received; offered to receive] **any** [payment; thing of value; gratuity; reward; promise of a payment, thing of value, gratuity or reward]; **and**
- (3) **Defendant had an agreement or understanding that** [(his; her) testimony would be influenced thereby; (he; she) would absent (himself; herself) from the trial or proceeding in which (his; her) testimony was required]; **and**
- (4) **This conduct took place on or about** <date> **in** [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the above elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

14 V.I. Code § 405

## Chapter 10. BURGLARY and RELATED OFFENSES

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### **10.01 Burglary in the First Degree (Structure occupied)**

The defendant is charged with the crime of burglary in the first degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [without permission] **broke and entered a building or structure of another; and**
- (2) **The building or structure was occupied by at least one person; and**
- (3) **Defendant** [was armed with a dangerous weapon; armed (himself; herself) with such a weapon while in the building or structure; was assisted by a confederate actually present; while engaged in effecting such entrance, or in committing any offense therein, or in escaping therefrom, assaulted any person]; **and**
- (4) **This conduct took place on or about** (*date*) in [this judicial division; <*name of judicial division*>].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

14 V.I. Code § 442



## **Practice Note**

**Actual Taking of Property Not Required.** The Territorial Court long ago held that the crime of burglary does not require actual taking of property. *Camacho v. Alliance Ins.*, 13 V.I. 219 (V.I. Terr. Ct. 1977).

### **10.03 Meaning of Breaking and Entering**

**For the crime of burglary, “break” means and includes** [breaking or violently detaching any part of a building, internal or external; opening, for the purpose of entering therein, by any means whatever, any outer door of a building, or of any apartment or set of apartments therein separately used or occupied, or any window, shutter, scuttle or other things used for covering or closing an opening thereto or therein, or which gives passage from one part thereof to another; obtaining an entrance into such a building or apartment, by any threat or artifice used for that purpose, or by collusion with any person therein; entering such a building or apartment by or through any pipe, chimney or other opening, or by excavating, digging or breaking through or under the building, walls or foundation thereof].

**“Enter” includes the entrance of the offender into [a; such] building or apartment, or the insertion therein of any part of his body or any instrument or weapon held in his hand, and used, or intended to be used, to threaten or intimidate persons in the building, or to detach or remove property.**

### **Sources & Authority**

14 V.I. Code § 441

### **10.05 Burglary in the Second Degree**

**The defendant is charged with the crime of burglary in the second degree. The People must prove beyond a reasonable doubt that**

- (1) The defendant [without permission] broke and entered a building or structure of another; and**
- (2) Defendant intended to commit an offense therein; and**
- (3) This conduct took place on or about (*date*) in (this judicial division; <*name of judicial division*>).**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 443

### Practice Note

**Assault Not Required.** Actually assaulting someone after breaking and entering into that person's home is not an element of the crime of second-degree burglary because the crime is completed before any assault can possibly take place. Thus, the lack of an instruction on self-defense could not have affected the jury's finding on second-degree burglary. *Fahie v. People*, 59 V.I. 505 (VI. 2013).

QUESTION BY MODEL INSTRUCTIONS COMMITTEE: Is there an building-occupancy requirement for Second Degree Burglary?

### **10.07 Burglary in the Third Degree (Entry intending to commit offense)**

The defendant is charged with the crime of burglary in the third degree. The People must prove beyond a reasonable doubt that

- (1) The defendant [without permission] broke and entered a building or structure, or any part thereof; and
- (2) Defendant intended to commit an offense therein; and
- (3) This conduct took place on or about (*date*) in (this judicial division; <*name of judicial division*>).

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 444

### **10.09 Burglary in the Third Degree (Entering, committing offense and breaking out of the structure)**

The defendant is charged with the crime of burglary in the third degree. The People must prove beyond a reasonable doubt that

- (1) The defendant [without permission] entered a building or structure, or any part thereof; and
- (2) Defendant committed an offense therein; and
- (3) Defendant broke out of the building or structure; and
- (4) This conduct took place on or about (*date*) in (this judicial division; <*name of judicial division*>).

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 444

#### **Practice Note**

**Charging the Offense Defendant Intends to Commit.** Decades ago, the Third Circuit, interpreting this statutory offense, held that an information charging burglary that fails to state the offense defendant intended to commit upon entry is inadequate because it does not contain an essential element of the offense intended to be charged and insufficiently apprises defendant of what he must be prepared to meet. *Gov't of V.I. v. Pemberton*, 813 F.2d 626 (3d Cir. 1987).

## **10.11 Unlawful Entry**

The defendant is charged with the crime of unlawful entry of a building. The People must prove beyond a reasonable doubt that

- (1) The defendant [without permission] entered a building or structure of another; and**
- (2) Defendant intended to commit an offense therein; and**
- (3) This conduct took place on or about (*date*) in (this judicial division; <*name of judicial division*>).**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 445

## **10.13 Burglary—Possession Inference**

If you believe from the evidence that [a dwelling house; an office; a shop; a manufactured home; a storehouse; a warehouse; a banking house; a house; a ship; a vessel; a river craft; a railroad car; an automobile used as a dwelling; a truck used as a dwelling; a trailer used as a dwelling; a building permanently affixed to realty] **has been broken into and goods stolen therefrom and that the breaking and entering and theft of the goods were committed at the same time, by the same person or persons, then proof of exclusive possession by the defendant of recently stolen goods is a circumstance from which you may reasonably infer that the defendant was the burglar unless, from all the evidence, you have a reasonable doubt as to whether the defendant was the burglar.**

You may not find from the possession of recently stolen goods alone that the defendant is guilty of burglary.

The term “recently” is a relative term. The longer the period of time since the theft, the more doubtful becomes the inference which may reasonably be drawn from the defendant’s possession of the goods stolen.

[“Exclusive possession” must be actual knowing possession. “Exclusive possession” may be joint with another or others but it must be under circumstances which cause you to believe that the defendant has knowing joint possession. It is not shown when

the property is found on premises owned or occupied by others as well as the defendant, or in a place where others had equal opportunity or right of access, unless there is a further showing of actual knowing possession.]

### *Sources & Authority*

*Francis v. Franklin*, 471 U.S. 307 (1985); *Sandstrom v. Montana*, 442 U.S. 510 (1979)

### **Practice Note**

The instruction is drafted to ensure compliance with current constitutional principles under *Sandstrom* and *Francis*, and to avoid any concern that the prior instructions could be interpreted to shift the burden of proof to the defendant or to require a defendant to explain his possession of recently stolen goods, compromising his constitutional right to remain silent.

The Instruction retains the permissible inference of burglary that may be drawn from exclusive possession of recently stolen property, but allows the jury to reject the inference if it has a reasonable doubt as to guilt upon consideration of all the evidence. The instruction assumes that the jury is fully instructed as to the burden of proof and that a defendant in a criminal case is not required to testify and has no burden to produce any evidence.

### **10.15 Inference of Criminal Intent**

**When the defendant unlawfully enters** [a dwelling house; an office; a shop; a manufactured home; a storehouse; a warehouse; a banking house; a house; a ship; a vessel; a river craft; a railroad car; an automobile used as a dwelling; a truck used as a dwelling; a trailer used as a dwelling; a building permanently affixed to realty], **you may reasonably infer that the entry was made with criminal intent. The specific criminal intent with which such entry is made may be inferred from the surrounding facts and circumstances, unless, from all the evidence, you have a reasonable doubt as to whether the defendant had such specific criminal intent.**

## Chapter 11. CHILD ABUSE & NEGLECT

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### **11.01 Definitions in Child Abuse or Neglect Cases**

In prosecutions for child abuse or neglect, the statutes define the following terms:

**“Abuse”** means the infliction of physical, mental or emotional injury upon a child, or maltreatment, sexual conduct or sexual contact with a child, or exploitation of a child by any person.

**“Basic necessities of life”** means food, shelter, clothing, medical care and education.

**“Child”** means any person under 18 years of age.

**“Emotional injury”** or **“mental injury”** means psychological injury or harm which impairs the mental or emotional health or functioning of a child.

**“Neglect”** means to place a child or allow a child to be placed in a situation which a reasonable person should know is dangerous to the child's health or welfare, and includes, but is not limited to, the following:

- (1) leaving a child unsupervised, taking into account the age and developmental stage of the child;
- (2) denying or failing to provide a child with shelter, food, clothing, medical care or education;
- (3) leaving a child in the care of any person known to use, possess or sell illegal drugs or abuse alcohol;
- (4) leaving a child in the care of any person known to have engaged in sexual activity with any child;
- (5) leaving a child in the care of any person known to be incapable of providing adequate care for a child; or
- (6) keeping a child under the age of 16 years home from school to care for other children.

**“Physical injury”** means the impairment of physical condition and includes, but is not limited to, any skin bruising, bleeding, failure to thrive, malnutrition, burn, bone

fracture, soft tissue swelling, subdural hematoma, injury to any internal organ, or any physical condition that threatens a child's health or welfare.

*“Serious emotional injury”* or *“serious mental injury”* means that which creates a substantial risk of death, or which causes serious or protracted impairment of mental or emotional health.

*“Serious physical injury”* means that which creates a substantial risk of death, or which causes serious or permanent disfigurement, or which causes serious impairment of health, or loss or protracted impairment of the function of any bodily organ or limb.

*“Sexual conduct”* means actual or simulated:

- (1) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (2) penetration of the vagina or rectum however slight by hand, finger or by any object except when done as part of a recognized medical procedure; and
- (3) sexual bestiality.

*“Sexual contact”* means any touching of another person with the genitals or any touching of the genitals or anus of another person, lips, groin, inner thighs, buttocks or the breasts of another person, or such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person.

## Sources & Authority

14 V.I.C. § 503

### **11.03 Child Abuse Under 14 V.I.C. § 505**

The defendant is charged with the crime of child abuse. The People must prove beyond a reasonable doubt each of the following elements:

- (1) That *<name of child>* was under the age of 18 at the time of the defendant’s alleged conduct; and
- (2) The defendant

*\* Select element(s) charged in this case \**

... knowingly or recklessly caused *<name of child>* to suffer physical, mental, or emotional injury;

... knowingly or recklessly caused *<name of child>* to be placed in a situation where it was reasonably foreseeable that (he; she) might suffer physical, mental, or emotional injury or be deprived of any of the basic necessities of life;

... engaged in sexual conduct with <name of child>;

... [exploited <name of child>;

and

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

#### **14 V.I.C. § 503, § 505**

*Gonsalves v. People*, 2019 VI 4; *Monelle v. People*, 63 V.I. 757 (V.I. 2015); *Rawlins v. People*, 61 V.I. 593 (VI. 2014); *Brathwaite v. People*, 60 V.I. 419 (VI. 2014); *LeBlanc v. People*, 56 V.I. 536 (VI. 2012)

### **Practice Note**

To prove the crime of “Child Abuse” in violation of 14 V.I.C. § 505, the prosecution must prove: (1) the defendant knowingly or recklessly engaged in “abuse” against a child, 14 V.I.C. § 503(c). *Gonsalves v. People*, 2019 VI 4 ¶48. The term “child” means any person under 18 years of age, 14 V.I.C. § 503(c), and subsection (a) of § 503 states that “[a]buse means the infliction of physical, mental, or emotional injury upon a child, or maltreatment, sexual conduct with a child, or exploitation of a child by any person.”

Section 505 provides four modes by which the criminal act of the crime of Child Abuse can be accomplished. *Brathwaite*, 60 V.I. at 433 n.8. A defendant violates section 505 of title 14, if the defendant: (1) abuses a child; (2) causes a child to suffer physical, mental, or emotional injury; (3) places a child in a situation where it is reasonably foreseeable that a child may suffer physical, mental or emotional injury; or (4) places a child in a situation where it is a reasonably foreseeable possibility that the child may be deprived of any of the basic necessities of life. 14 V.I.C. § 505. See *Gonsalves*, 2019 V.I. 4 ¶51.

In *Gonsalves*, ¶49, the Supreme Court explained that a defendant must possess one of two states of mind when acting in order to violate section 505; the defendant must either act with knowing intent or reckless intent. 14 V.I.C. § 505. The Court observed that persons act knowingly when they have “personal knowledge.” 1 V.I.C. § 41 (defining knowingly). However, to act knowingly “does not require any knowledge of the unlawfulness of an act or omission.” *Id.*; *Duggins v. People*, 56 V.I. 295, 301 (V.I. 2012) (defining knowing as “having or showing awareness or understanding”); cf. *People v. Clarke*, 55 V.I. 473, 479 (V.I. 2011). In *Gonsalves* the defendant’s conduct was undeniably knowing, as he was conscious when he physically engaged in sexual contact with the victim and the record was devoid of any evidence suggesting that he lacked an awareness of his actions.



**Recklessness.** In *Gonsalves* the Supreme Court of the Virgin Islands relied in part on the Model Penal Code definition of recklessness, under which a person acts recklessly with respect to a material element of an offense

when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

Model Penal Code § 2.02(2)(c). The Court wryly observed that “[h]aving sexual relations with one's child is unquestionably, at a minimum, conduct that is reckless as it relates to potentially causing mental or emotional harm to the minor victim.” *Gonsalves*, ¶50.

**Constitutionality.** The Territorial Court held more than two decades ago that the first phrase of § 505, prohibiting “abusing a child” is unconstitutionally vague. Although abuse is defined in 14 V.I.C. § 503(a), the Territorial Court observed that this provision merely refers to the infliction of any physical, mental or emotional injury upon a child, without encompassing the degree of injury or any other reasonable standard and first charging phrase, as written, did not establish standards that distinguish lawful from unlawful conduct. Thus the first charging phrase of the Code provision, which allows a person to be charged for “abusing a child,” does not sufficiently define what disciplinary conduct is permissible and what is prohibited and, therefore, it is violative of due process requirements of U.S. Constitution and Section 3 of the Revised Organic Act of 1954. *Gov't of the V.I. v. John*, 32 V.I. 115 (V.I. Terr. Ct. 1995).

In the modern era, however, the Supreme Court has held that the child abuse statute is not unconstitutionally vague as applied to a defendant, where there would be no doubt that oral sex fell within the bounds of what was proscribed by the statute. *Rawlins v. People*, 61 V.I. 593 (VI. 2014). *See also Brathwaite v. People*, 60 V.I. 419 (VI. 2014), holding that defendant’s sexual intercourse with his 12-year-old daughter was within the scope of conduct prohibited by the statute, and thus he did not have standing to challenge the vagueness of the statute as applied to other situations. On the other hand, a conviction for child abuse under 14 V.I.C. § 505 violated due process because of the vagueness of the portion of § 505 under which defendant was convicted in a case where his conduct, touching the victim's genital area through her pants, was not clearly proscribed by § 505. The Court also noted that the Child Abuse Act did not define “sexual conduct,” and the term did not have a plain and ordinary meaning that did not need further technical explanation. *LeBlanc v. People*, 56 V.I. 536 (VI. 2012).

**Beatings.** There was sufficient evidence that defendant physically abused the victim based on evidence that he beat the 12 or 13-year-old victim after hearing that she had a boyfriend at school. *Charles v. People*, 60 V.I. 823 (VI. 2014)(evidence of a black eye and swollen lip).

## **11.05 Aggravated Child Abuse**

The defendant is charged with the crime of aggravated child abuse or neglect. The People must prove beyond a reasonable doubt each of the following elements:

(1) *<name of child>* was under the age of 18 at the time of the defendant's alleged conduct; and

(2) The defendant

*\* Select element(s) charged in this case \**

... knowingly or recklessly caused *<name of child>* to suffer physical, mental, or emotional injury;

... knowingly or recklessly caused *<name of child>* to be placed in a situation where it was reasonably foreseeable that (he; she) might suffer physical, mental, or emotional injury or be deprived of any of the basic necessities of life;

... engaged in sexual conduct with *<name of child>*;

... exploited *<name of child>*;

**and**

(3) **That as a result** *<name of child>* [suffered serious physical injury; suffered serious mental or emotional injury; died from such abuse or neglect]; **and**

(4) **This conduct took place on or about** *<date>* in [this judicial division; *<name of judicial division>*].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I.C. § 504, § 506**

## 11.07 Child Neglect

The defendant is charged with the crime of child neglect. The People must prove beyond a reasonable doubt each of the following elements:

- (1) That *<name of child>* was under the age of 18 at the time of the defendant's alleged conduct; and
- (2) The defendant was a person responsible for the safety or welfare of *<name of child>* such as, but not limited to, a parent, stepparent, guardian, schoolteacher, or babysitter; and
- (3) The defendant

*\* Select element(s) charged in this case \**

... [placed *<name of child>*; allowed *<name of child>* to be placed] in a situation which a reasonable person should know is dangerous to the child's health or welfare, including, but not limited to, leaving (him; her) unsupervised, taking into account (his; her) age and developmental stage;

... denied; failed to provide] *<name of child>* with shelter, food, clothing, medical care or education;

... left *<name of child>* in the care of any person known to use, possess or sell illegal drugs or abuse alcohol;

... left *<name of child>* in the care of any person known to have engaged in sexual activity with any child;

... left *<name of child>* in the care of any person known to be incapable of providing adequate care for a child;

... kept *<name of child>*, who was under the age of 16 at the time, home from school to care for other children;

... [knowingly; recklessly] [caused; allowed] *<name of child>* to suffer physical, mental or emotional injury;

... [knowingly; recklessly; negligently] deprived *<name of child>* of any of the basic necessities of life;

and

- (4) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

14 V.I.C. § 503, §504

*Elizee v. People*, 54 V.I. 466 (V.I. 2010)

### Practice Note

In *Elizee* the Supreme Court explained that the language of § 504 indicates that the Legislature intended to create several alternate means or modes of committing child neglect: (1) by neglecting a child as that term is defined in § 503(e) of the Act; (2) by knowingly, recklessly or negligently causing or allowing a child to suffer physical, mental or emotional injury; or (3) by knowingly, recklessly or negligently depriving a child of any of the basic necessities of life. 54 V.I. at 476-77. The Instruction above incorporates the § 503(e) categories of abuse along with the two that are specifically enumerated in § 504 itself.

### 11.09 Aggravated Child Neglect

The defendant is charged with the crime of aggravated child abuse or neglect. The People must prove beyond a reasonable doubt each of the following elements:

(1) That *<name of child>* was under the age of 18 at the time of the defendant's alleged conduct; and

(2) The defendant

*\* Select element(s) charged in this case \**

- ... [placed *<name of child>*; allowed *<name of child>* to be placed] in a situation which a reasonable person should know is dangerous to the child's health or welfare, including, but is not limited to, leaving (him; her) unsupervised, taking into account (his; her) age and developmental stage;
- ... [denied; failed to provide] *<name of child>* with shelter, food, clothing, medical care or education;
- ... left *<name of child>* in the care of any person known to use, possess or sell illegal drugs or abuse alcohol;
- ... left *<name of child>* in the care of any person known to have engaged in sexual activity with any child;
- ... left *<name of child>* in the care of any person known to be incapable of providing adequate care for a child;
  - ... kept *<name of child>*, who was under the age of 16 at the time, home from school to care for other children;
  - ... [knowingly; recklessly] [caused; allowed] *<name of child>* to suffer physical, mental or emotional injury;

... [knowingly; recklessly; negligently] deprived <name of child> of any of the basic necessities of life;

**and**

**(3) As a result** <name of child> [suffered serious physical injury; suffered serious mental or emotional injury; died from such abuse or neglect]; **and**

**(4) This conduct took place on or about** <date> in [this judicial division; <name of judicial division>].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I.C. § 504, § 506**

*Elizee v. People*, 54 V.I. 466 (V.I. 2010)

### **Practice Note**

When defendant was charged only with aggravated child neglect under 14 V.I.C. § 506, an instruction that permitted the jury to consider whether she committed either aggravated child neglect or aggravated child abuse amounted to an impermissible amendment under Fed. R. Crim. P. 7(e) and constituted plain error. *Elizee*, 54 V.I. 466

In *Elizee* the Supreme Court explained that the offense of aggravated child neglect was established by the Legislature as part of the Child Protection Act of 1992 (the “Act”). The Act defines the offense of “child neglect” as follows:

Any person who is responsible for the safety or welfare of a child, including, but not limited to, a child's parent, stepparent, guardian, schoolteacher, or baby sitter, who neglects a child, or who knowingly, recklessly or negligently causes or allows a child to suffer physical, mental or emotional injury, or who knowingly, recklessly or negligently deprives a child of any of the basic necessities of life, shall be punished by a fine of not less than \$ 500, or by imprisonment of not more than 15 years, or both.

14 V.I.C. § 504. The language of this statute indicates that the Legislature intended to create three alternate means or modes of committing child neglect: (1) by neglecting a child as that term is defined in section 503(e) of the Act; (2) by knowingly, recklessly or negligently causing or allowing a child to suffer physical, mental or emotional injury; or (3) by knowingly, recklessly or negligently depriving a child of any of the basic necessities of life. See *Elizee*, 54 V.I. at 476-77.

## Chapter 12. COMPUTER CRIMES 14 V.I.C. § 459–470, 487- 490

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### 12.01 Definitions

For purposes of computer crimes under Chapter 22 of Title 14, the following definitions apply:

(a) “Access” means to approach, instruct, communicate with, store data in, enter data in, retrieve data from, or otherwise make use of any resources of, a computer, computer system, computer network or cellular device.

(b) “Computer” means any cellular device, electromagnetic device, laptop, notebook, handheld electronic device, personal digital assistant, tablet computer, smart notebook, optical, hydraulic or organic device or group of devices which, pursuant to a computer program, human instruction, or permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on computer data and can communicate the results to another computer or to a person. The term “computer” includes any connected or directly related device, equipment, or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device.

(c) “Computer data” means any representation of information, knowledge, fact, concept, or instruction which is being prepared or has been prepared and is intended

to be processed, is being processed, or has been processed in a computer or computer network. "Computer data" may be in any form, whether readable only by a computer or only by a human or by either, including, but not limited to, computer printouts, magnetic storage media, punched cards, or data stored internally in the memory of the computer.

(d) "Computer network" means a set of related, remotely connected devices and any communications facilities including more than one computer with the capability to transmit data among them through the communications facilities.

(e) "Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and any combination of them, and includes, but is not limited to, communication with, storage of data to, or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A "computer operation" for a particular computer may also be any function for which that computer was generally designed.

(f) "Computer program" means a series of instructions or statements or related data that, in actual or modified form, is capable of causing a computer or a computer system to perform specified functions in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from the computer systems.

(g) "Computer services" includes computer time or services, data processing services, internet service providers" networks and facilities located in the Territory or information or data stored in connection with them.

(h) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer, computer program or computer network.

(i) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, and software.

(j) "Data" means any representation of information, knowledge, facts, concepts, or instructions which are being prepared or have been prepared and are intended to be entered, processed, or stored, are being entered, processed, or stored or have been entered, processed, or stored in a computer, computer system, or computer network.

(k) "Electronic mail service provider" means any business or organization qualified to do business in the Virgin Islands that provides registered users the ability to send or receive electronic mail through equipment located in this Territory and that is an intermediary in sending or receiving electronic mail.

(l) "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or

debit card transaction authorization mechanism, marketable security, or any computerized representation of any of these.

(m) "Owner" means an owner or lessee of a computer or a computer network or an owner, lessee, or licensee of computer data, computer programs, or computer software.

(n) "Person" shall include any individual, partnership, association, corporation, limited liability company or joint venture.

(o) "Property" includes, but is not limited to:

(1) Real property;

(2) Computers, cellular devices and computer networks;

(3) Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:

(A) Tangible or intangible;

(B) In a format readable by humans or by a computer;

(C) In transit between computers or within a computer network or between any devices which comprise a computer; or

(D) Located on any paper or in any device on which it is stored by a computer or by a human; and

(E) Computer services.

(p) A person "uses" a computer or computer network when he or she:

(1) Attempts to cause or causes a computer or computer network to perform or to stop performing computer operations;

(2) Attempts to cause or causes the withholding or denial of the use of a computer, computer network, computer program, computer data or computer software to another user; or

(3) Attempts to cause or causes another person to put false information into a computer.

(q) A person is "without authority" when:

(1) he has no right, authority or permission of the owner to use a computer, or, he or she uses a computer in a manner exceeding his or her right or permission; or

(2) he or she uses an Internet service e-mail system offered by any U.S. Virgin Islands based Internet service provider in contravention of the authority granted by or in violation of the policies set by the Internet service provider.

(3) Transmission of electronic mail from an organization to its members shall not be deemed to be unsolicited bulk electronic mail.



(r) “Services” includes, but is not limited to, computer time, data processing, and storage functions.

(s) “Source document” means an original document or record which forms the basis of every electronic entry put into a computer, computer system, or computer network.

### **Sources & Authority**

14 V.I. Code § 460

### ***Practice Note***

Under the Computer Crimes and Technology Act of 2013, Chapter 22 of Title 14 of the V.I. Code, comprising §§ 459 – 470 a series of distinct crimes are set forth. The Model Jury Instructions Committee recommends that only those definitions applicable to a particular prosecution be used, to avoid confusing the jury with definitions that they do not need to apply.

**Civil Action.** Under 14 V.I.C. § 468 any person injured as a result of a violation of the Computer Crimes chapter may bring a civil action against the violator for compensatory damages, punitive damages, court costs, and any other relief that the court deems appropriate, including reasonable attorneys’ fees. Subsection (b) of that statute provides that – if the injury arises from the transmission of unsolicited bulk electronic mail – the injured person, other than an electronic mail service provider, may also recover attorney’s fees and costs and may elect, in lieu of actual damages, to recover the lesser of \$500 for each and every unsolicited bulk electronic mail message transmitted in violation of the Computer Crimes chapter up to a maximum of \$25,000 per day. However, the injured person will not have a cause of action against the electronic mail service provider which merely transmits the unsolicited bulk electronic mail over its computer network. For transmission of unsolicited bulk electronic mail, an injured electronic mail service provider may also recover attorney’s fees and costs. Subsection (d) of § 268 states that – at the request of any party – the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party. Under subsection (e) it is provided that § 468 itself does not limit any person’s right to pursue any *additional* civil remedy otherwise allowed by law.

### **12.03 Accessing a Computer for Fraudulent Purposes**

The defendant is charged with the crime of accessing a computer for fraudulent purposes. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) Defendant knowingly and intentionally [accessed; caused to be accessed] any [computer; computer system; computer network], either directly or indirectly; and

(2) Defendant's purpose was to

*\* Select element(s) charged in this case \**

... knowingly and intentionally [devise; execute] any [scheme; artifice] to defraud;

... obtain [money; property; services] by means of false or fraudulent [pretenses; representations; promises];

... to [damage; destroy; alter; delete; remove] any [program; data] contained in the [computer; computer system; computer network] in connection with any [scheme; artifice] to defraud;

**and**

(3) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 461

#### ***Practice Note***

Section 461 of Title 14 provides as follows:

##### **§ 461. Access to computer for fraudulent purposes**

(a) Whoever knowingly and intentionally directly or indirectly accesses or causes to be accessed any computer, computer system, or computer network for the purpose of:

(1) knowingly and intentionally devising or executing any scheme or artifice to defraud;

(2) obtaining money, property, or services by means of false or fraudulent pretenses, representations, or promises; or

(3) damaging, destroying, altering, deleting, or removing any program or data contained in it in connection with any scheme or artifice to defraud, shall be guilty of a felony and shall be subject to the penalties set forth in section 467 of this chapter.

## **12.05 Intentional Access, Alteration, Damage or Destruction**

The defendant is charged with the crime of intentional access, alteration, damage or destruction of a computer, computer system, network, software or data. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) Defendant** [directly; indirectly] [accessed; altered; damaged; destroyed] **any**

*\* Select element(s) charged in this case \**

... computer; computer system; computer network; computer software; computer program;

... data contained in a [computer; computer system; computer program; computer network];

**and**

**(2) Defendant acted intentionally and without authorization; and**

**(3) Defendant acted for [fraudulent; other illegal purposes]; and**

**(4) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 462

### ***Practice Note***

Section 462 of Title 14 provides as follows:

## **§ 462. Intentional access, alteration, damage or destruction**

(a) Whoever intentionally, without authorization, and for fraudulent or other illegal purposes, directly or indirectly, accesses, alters, damages, or destroys any computer, computer system, computer network, computer software, computer program, or data contained in a computer, computer system, computer program, or computer network shall be guilty of a felony and shall be subject to the penalties set forth in section 467 of this chapter.

### **12.07 Computer Theft (Felony)**

The defendant is charged with the crime of computer theft. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) Defendant** [took; transferred; concealed; retained possession of] any

*\* Select element(s) charged in this case \**

... computer; computer system; computer network; computer software; computer program;

... data contained in a [computer; computer system; computer program; computer network];

and

**(2) Defendant acted intentionally and without claim of right; and**

**(3) The value of the material taken was in excess of \$500; and**

**(4) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 463

### ***Practice Note***

Section 463 of Title 14 provides as follows:

### § 463. Computer theft

(a) Whoever, intentionally and without claim of right, takes, transfers, conceals or retains possession of any computer, computer system, computer network, computer software, computer program, or data contained in a computer, computer system, computer program, or computer network with a value in excess of five hundred dollars (\$500) shall be guilty of a felony and shall be subject to the penalties set forth in section 467 of this chapter.

(b) If the value is five hundred dollars (\$500) or less, the person shall be guilty of a misdemeanor punishable by imprisonment for a term not exceeding one year or by a fine of not more than one thousand dollars (\$1,000), or both.

**Misdemeanor Version of the Charge.** The monetary value to be used in element (3) of this instruction is applicable when the theft is charged as a felony. In a misdemeanor prosecution under subsection (b) of the statute, element (3) should be deleted from the Instruction.

### 12.09 Computer Trespass

**The defendant is charged with the crime of computer trespass. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) Defendant [used; accessed] a [computer; computer network] of another [with; without] authority; and**

**(2) Defendant intended to**

*\* Select element(s) charged in this case \**

... [temporarily; permanently] [remove; halt; otherwise disable] any [computer data; computer programs; or computer software] from a [computer; computer network];

... cause a computer to malfunction regardless of how long the malfunction persists;

... [alter; erase] any [computer data; computer programs; computer software];

... [create; alter] [a financial instrument; an electronic transfer of funds];

... cause physical injury to the property of another;

... [make; cause to be made] an unauthorized copy, in any [printed; electronic; other form] of [computer data; computer programs; computer software] [residing in; communicated by; produced by] a [computer; computer network];

- ... forge [e-mail header information; other internet routing information] for the purpose of sending unsolicited bulk electronic mail [through; into] the facilities of an electronic mail service provider or its subscribers;
- ... [sell; give; otherwise distribute]; [possess with the intent to sell, give or otherwise distribute] software which is designed to [facilitate; enable] the forgery of [electronic mail header information; other internet routing information] for the purpose of sending unsolicited bulk electronic mail [through; into] the facilities of an electronic mail service provider or its subscribers];

**and**

**(3) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**14 V.I. Code § 464**

### ***Practice Note***

Section 464(a) of Title 14 provides as follows:

**§ 464. Computer trespass**

(a) It shall be unlawful for any person to use or access a computer or computer network of another with or without authority with the intent to:

- (1) Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network;
- (2) Cause a computer to malfunction regardless of how long the malfunction persists;
- (3) Alter or erase any computer data, computer programs, or computer software;
- (4) Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;
- (5) Cause physical injury to the property of another;

(6) Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network;

(7) Forge e-mail header information or other internet routine information for the purpose of sending unsolicited bulk electronic mail through or into the facilities of an electronic mail service provider or its subscribers; or

(8) To sell, give or otherwise distribute or possess with the intent to sell, give or distribute software which is designed to facilitate or enable the forgery of electronic mail header information or other internet routing information for the purpose of sending unsolicited bulk electronic mail through or into the facilities of an electronic mail service provider or its subscribers.

**Caveat.** Subsection (b) of this statute provides that nothing in this section is to be construed to interfere with or prohibit terms or conditions in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services, or computer software or to create any liability by reason of terms or conditions adopted by, or technical measures implemented by, a United States Virgin Islands-based electronic mail service provider to prevent the transmission of unsolicited bulk electronic mail in violation of this chapter.

## **12.11 Cyber Stalking or Cyber Harassment**

**The defendant is charged with the crime of [cyber stalking; cyber harassment]. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) Defendant** [transmitted any communication by computer or other electronic device to any person; caused any person to be contacted] **for the sole purpose of harassing that person or his or her family; and**

**(2) Defendant's course of conduct was of a kind that would cause a reasonable person to** [suffer substantial emotional distress; be in fear of bodily injury]; **and**

**(3) Defendant's conduct took place on or about <date> in** [this judicial division; <name of judicial division>].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**14 V.I. Code § 465**

### ***Practice Note***

Section 465 of Title 14 provides as follows:

#### **§ 465. Cyber-stalking and cyber-harassment prohibited**

(a) Whoever transmits any communication by computer or other electronic device to any person or causes any person to be contacted for the sole purpose of harassing that person or his or her family is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), by imprisonment for not more than one year, or both.

(b) For the purpose of this section, “harassing” means any knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or bothers the person, and which serves no legitimate purpose.

(c) The course of conduct must be of a kind that would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury.

(d) As used in this section, “course of conduct” means a pattern of conduct comprised of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”



## **12.13 Cyber Stalking or Cyber Harassment Definitions**

For purposes of the crime of cyber stalking or cyber harassment,

**“harassing” means any knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or bothers the person, and which serves no legitimate purpose; and**

**“course of conduct” means a pattern of conduct comprised of a series of acts over a period of time, evidencing a continuity of purpose.**

### **Sources & Authority**

14 V.I. Code § 465

### ***Practice Note***

Section 465 of Title 14 provides as follows:

#### **§ 465. Cyber-stalking and cyber-harassment prohibited**

(a) Whoever transmits any communication by computer or other electronic device to any person or causes any person to be contacted for the sole purpose of harassing that person or his or her family is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), by imprisonment for not more than one year, or both.

(b) For the purpose of this section, “harassing” means any knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or bothers the person, and which serves no legitimate purpose.

(c) The course of conduct must be of a kind that would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury.

(d) As used in this section, “course of conduct” means a pattern of conduct comprised of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

**Constitutionally Protected Conduct.** Note that 14 V.I.C. § 465(d) expressly provides that constitutionally protected activity is not included within the meaning of “course of conduct.” This is an issue for the judge, rather than the jury, and hence is not included in the Instruction itself.

## **12.15 Violation of a Restraining Order**

The defendant is charged with the crime of violating a restraining order. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) Defendant was subject to** [a restraining order; an injunction] **issued by a court of competent jurisdiction enjoining (him; her) from harassing another person; and**

**(2) Defendant has been convicted of the crime of** [cyber stalking; cyber harassment] **for actions against the person protected by the** [court order; injunction]; **and**

**(3) Defendant's conduct took place on or about** *<date>* **in** [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 466

### ***Practice Note***

Section 466(a) of Title 14 provides as follows:

#### **§ 466. Violation of restraining order**

(a) Whenever there is a restraining order or injunction issued by a court of competent jurisdiction enjoining one person from harassing another person, and the person so enjoined is convicted of the crime as set forth in section 465 for actions against the person protected by the court order or injunction, he or she shall be guilty of a felony which shall be punishable by imprisonment for not more than two (2) years, or by a fine of not more than six thousand dollars (\$6,000), or both.

## **12.17 Use of False Payment Information**

The defendant is charged with the crime of using false payment information. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) Defendant** [intentionally; knowingly]

*\* Select element(s) charged in this case \**

... made a transmission of false data for the purpose of submitting a claim for payment;

... [made; presented; used] any data for the purpose of submitting a claim for payment with knowledge of its falsity and with knowledge that it will be used for any claim for payment;

... caused to be [made; presented; used] any data for the purpose of submitting a claim for payment with knowledge of its falsity and with knowledge that it will be used for any claim for payment];

**and**

**(2) Defendant's conduct took place on or about** *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 469(a)

### ***Practice Note***

Section 469(a) of Title 14 provides as follows:

#### **§ 469. Use of false information**

(a) Whoever intentionally or knowingly makes a transmission of false data for the purpose of submitting a claim for payment, or makes, presents, or uses or causes to be made, presented, or used any data for the purpose of submitting a claim for payment with knowledge of its falsity and with knowledge that it will be used for any claim for payment, shall be guilty of a felony and shall be subject to the penalties set forth in section 467 of this chapter.

## **12.19 Use of False Data**

The defendant is charged with the crime of using false data. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) Defendant [intentionally; knowingly]

*\* Select element(s) charged in this case \**

... made a transmission of false data;

... [made; presented; used] any data with knowledge of its falsity;

... caused to be [made; presented; used] any data with knowledge of its falsity;

**and**

(2) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 469(b)

### ***Practice Note***

Section 469(b) of Title 14 provides as follows:

#### **§ 469. Use of false information**

(b) Whoever intentionally or knowingly: (1) makes a transmission of false data; or (2) makes, presents or uses or causes to be made, presented or used any data for any other purpose with knowledge of its falsity, shall be guilty of a misdemeanor and shall be subject to the penalties set forth in section 467 of this chapter.

## **12.21 Tampering with Computer Source Documents (Felony)**

The defendant is charged with the crime of tampering with computer source documents. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) Defendant [intentionally; knowingly]

*\* Select element(s) charged in this case \**

... [concealed; destroyed; altered] any computer source document used for a [computer; computer program; computer system; computer network];

... caused another person to [conceal; destroy; alter] any computer source document used for a [computer; computer program; computer system; computer network];

and

(2) The computer source document was required to be kept by law; and

(3) Defendant acted with the intent to obstruct an official investigation by any state agency authorized by law to conduct any [civil; criminal] investigation; and

(4) Defendant's conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 470(b)

### ***Practice Note***

Section 470(b) of Title 14 provides as follows:

#### **§ 470. Tampering with computer source documents**

(b) Whoever intentionally or knowingly conceals, destroys, or alters or intentionally, knowingly conceals, destroys, or alters or intentionally or knowingly causes another to conceal, destroy, or

alter any computer source document used for a computer, computer program, computer system, or computer network, when the computer source document is required to be kept by law, with the intent to obstruct an official investigation by any state agency authorized by law to conduct any civil or criminal investigation, shall be guilty of a felony and shall be subject to the provisions of section 467 of this chapter.

## **12.23 Tampering with Computer Source Documents (Misdemeanor)**

The defendant is charged with the crime of tampering with computer source documents. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) Defendant [intentionally; knowingly]

*\* Select element(s) charged in this case \**

... [concealed; destroyed; altered] any computer source document used for a [computer; computer program; computer system; computer network];

... caused another person to [conceal; destroy; alter] any computer source document used for a [computer; computer program; computer system; computer network];

and

(2) The computer source document was required to be kept by law; and

(3) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 470(a)

### ***Practice Note***

Section 470(a) of Title 14 provides as follows:

#### **§ 470. Tampering with computer source documents**

(a) Whoever intentionally or knowingly conceals, destroys, or alters or intentionally or knowingly causes another to conceal, destroy, or alter any computer source document used for a computer, computer program, computer system, or computer network, when the computer source document is required to be kept by law, shall be guilty of a misdemeanor and shall be subject to the provisions of section 467 of this chapter.

## Chapter 13. CONSPIRACY

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### **13.01 Conspiracy (Offenses other than Arson, Burglary, or a Felony Upon a Person)**

The defendant is charged with the crime of conspiracy. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant entered into an agreement with one or more other persons; and

(2) The agreement was that they were to

*\* Select element(s) charged in this case \**

... commit any crime;

... falsely and maliciously complain against another for any crime

... procure another to be [charged with; arrested for] any crime;

... falsely [move; maintain] any action or proceeding;

... cheat and defraud any person of property by any means which are in themselves criminal;

... obtain [money; property] by false pretenses;

... commit a crime [injurious to the public health; injurious to the public morals; for the perversion or obstruction of justice or due administration of the laws];

**and**

(3) **In addition to the agreement**, [defendant; another conspirator] **took some action for the purpose of** [completing; achieving] **the goal of the agreement; and**

(4) **This conduct took place on or about** <date> **in** [this judicial division; <name of judicial division>].



**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I.C. § 551, § 552**

*Francis v. People*, 57 V.I. 201 (VI. 2012)

### **Practice Note**

**Not Guilty of the Underlying Offense?** The Supreme Court of the Virgin Islands has made it clear that – where different offenses are charged in separate counts of an indictment, an acquittal on one or more of the counts does not invalidate a verdict of guilty on another even where the same evidence is offered in support of each count. This will lead to upholding conspiracy convictions despite the fact that the jury acquitted the defendants of the substantive crimes. *People v. Thompson*, 57 V.I. 327, 334 n.4 (V.I. 2012)

**Single or Multiple Conspiracies.** A test for recognizing a single overall conspiracy, which was developed in *United States v. Barr*, 963 F.2d 641 (3rd Cir. 1992), requires the court to first examine whether there is a common goal among the conspirators; second, the nature of the scheme must be scrutinized to determine whether the agreement contemplated bringing to pass a continuous result that will not continue without the continuous cooperation of the conspirators; third, the court must determine the extent to which the participants overlap in the various dealings. See the Territorial Court’s decision in *People v. Davis*, 35 V.I. 72 (V.I. Terr. Ct. 1997).

In dicta, the Supreme Court of the Virgin Islands in *Duggins v. People*, 56 V.I. 295, 309-10 (V.I. 2012), has noted extensive federal authority setting forth the doctrine of cases dealing with situations where the government alleges an all-encompassing large conspiracy, but proof at trial shows only a series of smaller conspiracies. Under such case law, the government must restrict itself to the proof of the actual conspiracy that the defendant is alleged to have engaged in. See *Kotteakos v. United States*, 328 U.S. 750, 765 (1946); *United States v. Perez*, 280 F.3d 318, 345 (3d Cir. 2002); *United States v. Vega*, 184 Fed. Appx. 236, 244 (3d Cir. 2006). See generally 16 Am. Jur. 2d Conspiracy § 11 (2010) (discussing how the court tells the difference between one large conspiracy and several smaller conspiracies which may have overlapping actors). Under this aspect of the doctrines flowing from the landmark U.S. Supreme Court decision in *Kotteakos*, if a court finds that the government has charged a single, large conspiracy, but only offered proof at trial that the defendant was actually part of a smaller discrete conspiracy to which proof of other conduct is not relevant, a defendant may be prejudiced if the jury hears evidence of actions by others who are not involved in the conspiracy in which defendant is shown to have engaged. See, e.g., *United States v. Padilla*, 982 F.2d 110, 114-16 (3d Cir. 1992).

**Acquittal of Co-Defendant.** Acquittal of a codefendant on charges of conspiracy to commit possession of a controlled substance with intent to distribute under 14 V.I.C. §§ 551 and 552 did not require defendant's acquittal, as there was sufficient evidence, including evidence that defendant told a confidential informant that he did not have drugs but that he knew someone

who might, upon which the jury could find that defendant conspired with someone other than the codefendant or a confidential informant. *People v. Poleon*, 50 V.I. 144 (Superior Ct. 2008).

### **14.03 Conspiracy to Commit Arson, Burglary or a Felony Upon a Person**

The defendant is charged with the crime of conspiracy to commit [arson; burglary; a felony upon another person]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant entered into an agreement with one or more other persons; and

(2) The agreement was that they were to

*\* Select element(s) charged in this case \**

... commit any felony, specifically, <name of felony> upon another person, specifically, <name of targeted person>;

... commit burglary;

... commit arson;

**and**

(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I.C. § 551, § 552

#### **Practice Note**

Under 14 V.I.C. § 552, there is no “overt action” requirement to establish a prima facie case of criminal conspiracy if the object of the agreement is to commit arson, burglary or a felony upon the person of a victim.

#### **14.05 Conspiracy Agreement Inferred from Acts or Conduct**

The existence of an agreement may be inferred from the actions or conduct of the parties.

#### **14.07 Completion of Crime Not Necessary**

It is not necessary that the defendant commit *<name of crime>* or attempt to commit *<name of crime>* to be guilty of the crime of conspiracy.

#### **14.09 Two-Party Minimum**

A conspiracy cannot exist unless criminal intent is shared by at least two people.

#### **14.11 Withdrawal or Change of Mind**

Withdrawal from the agreement or change of mind is not a defense to the crime of conspiracy.

## Chapter 14. CONTEMPTS 14 V.I.C. § 581 - 587

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#### **14.01 Contempt Constituting Crime of Domestic Violence**

The defendant is charged with the crime of contempt as an act of domestic violence. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant willfully disobeyed a lawful order prohibiting (him; her) from having contact with <name of victim> including**

*\* Select element(s) charged in this case \**

... restraining the defendant from entering the plaintiff's [residence; place of employment; business; school];

... prohibiting the defendant from harassing the [plaintiff; plaintiff's relatives] in any way;

... <describe any order issued pursuant to 16 V.I.C. § 98>;

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

14 V.I. Code § 582, 582a

#### **Practice Note**

**Statutory Background.** Every court of the Virgin Islands has the power to punish by fine or imprisonment, at its discretion, such contempt of its authority in three specified situations: (1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; (2) misbehavior of any of its officers in their official transactions; or (3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command. 14 V.I.C. § 581.

Under 14 V.I.C. § 582(a) disobeying any lawful writ, process, order, rule, decree or command of any court of the Virgin Islands – *if conduct also constitutes a criminal offense under any statute of the United States or under the laws of the Virgin Islands* – may be charged with criminal contempt and punished by fine or imprisonment, or both.

**Domestic Violence Provisions.** Under the terms of 14 V.I.C. § 582a(2) and (3), if the order disobeyed was issued where the judge determined that a deadly weapon was used or displayed by the defendant, the sentence must be not less than 6 months and not more than 5 years and a fine of not less than \$1,000 nor more than \$5,000 must be imposed. A person charged with an offense under § 582a “shall be detained and retained in custody until such time as the person appears before a judicial officer, or a judicial officer orders otherwise; provided that the person charged shall appear before a judicial officer within 48 hours from the time of arrest.”

**Jury Trial Provision.** Under § 583 of Title 14, if a contempt is charged under § 582(a), and the criminal offense referred is one in the trial of which the accused would be entitled to a trial by jury, upon demand the accused is “entitled to trial by jury, which shall conform as near as may be with the practice in other criminal cases.” Under § 584, however, contempts committed in or near the presence of the court, and contempts in disobedience to orders in prosecutions by the United States or the People of the Virgin Islands are not subject to the provisions of § 582 and 583.

## Chapter 15. CONVERSION OF GOVERNMENT PROPERTY 14 V.I.C. § 895

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### **15.01 Conversion of Government Property -- Definitions**

The defendant is charged with the crime of conversion of government property. For purposes of this crime the statute provides the following definitions;

- (1) "conversion" means an unauthorized assumption and exercise of the right of ownership or possession with the intent to own goods, chattels or money or any thing of value belonging to the Government of the Virgin Islands or of the United States or any department or agency thereof.
- (2) "value" means face, par or market value, or cost of price, either wholesale or retail, whichever is greater.
- (3) the term "property" means any record, voucher, warrant, money or thing of value.

#### Sources & Authority

14 V.I. Code § 895

### **15.03 Conversion of Government Property**

The defendant is charged with the crime of conversion of government property. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant [embezzled; stole; purloined; knowingly converted to his use; knowingly converted to the use of another; without authority sold; without authority conveyed; without authority disposed of]

*\* Select element(s) charged in this case \**

... any [record; voucher; warrant; money; thing of value] of the government of the Virgin Islands or any department or agency thereof;

... any property [made; being made] under contract with the Virgin Islands or the United States or any department or agency thereof];  
and

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**14 V.I. Code § 895**

### **Practice Note**

The statute governing these crimes, 14 V.I.C. § 895, provides as follows in relevant part:

#### **§ 895. Conversion of government property**

(a) Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells conveys or disposes of any record, voucher, warrant, money, or thing of value of the Virgin Islands or any department or agency thereof, or any property made or being made under contract with the Virgin Islands or the United States or any department or agency thereof;

(b) Whoever receives, conceals or retains the same as described in subsection (a) with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted, shall be fined in an amount up to \$10,000 under this section, in addition to full restitution, or imprisoned not more than five (5) years, or both; but if the value of the property converted does not exceed the sum of \$1,000, the person shall be fined up to \$1,000, in addition to restitution ordered under this section or imprisonment for not more than one year, or both.

#### ***NOTE OF THE MODEL JURY INSTRUCTIONS COMMITTEE:***

The statute – quoted above – is oddly, possibly poorly, drafted. There is no “or” in the phrasing of parts (a) and (b), and (in the statute as codified) the punishment is set forth only as to the receiving paragraph, part (b) of the Code section. In crafting draft Instructions 15.03 (above, re conversion) and 15.05 (below, re receiving converted property), the statute is treated as though it was worded as follows:

#### **§ 895. Conversion of government property**

Whoever

(a) embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells conveys or disposes of any record,

voucher, warrant, money, or thing of value of the Virgin Islands or any department or agency thereof, or any property made or being made under contract with the Virgin Islands or the United States or any department or agency thereof; or

(b) receives, conceals or retains the same as described in subsection (a) with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted,

shall be fined in an amount up to \$10,000 under this section, in addition to full restitution, or imprisoned not more than five (5) years, or both; but if the value of the property converted does not exceed the sum of \$1,000, the person shall be fined up to \$1,000, in addition to restitution ordered under this section or imprisonment for not more than one year, or both.

### **15.05 Receiving Converted Government Property**

The defendant is charged with the crime of receiving wrongfully converted government property. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant [received; concealed; retained] any**

*\* Select element(s) charged in this case \**

... [record; voucher; warrant; money; thing of value of the government of the Virgin Islands or any department or agency thereof;

... property [made; being made] under contract with the Virgin Islands or the United States or any department or agency thereof;

**and**

**(2) Defendant intended to convert such property to (his; her) use or gain; and**

**(3) Defendant knew such property to have been [embezzled; stolen; purloined; converted]; and**

**(4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**



## **Sources & Authority**

**14 V.I. Code § 895**

### **Practice Note**

The statute governing these crimes, 14 V.I.C. § 895, is set forth following the immediately preceding Instruction.

## Chapter 16. CREDIT CARD OFFENSES 14 V.I.C. § 3001 – 3016

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### 16.01 Definitions

As used in Virgin Islands Code provisions regarding credit card offenses, Chapter 117:

- (1) “Cardholder” means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.
- (2) “Credit card” means any instrument or device, whether known as a credit card, credit plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit.
- (3) “Expired credit card” means a credit card which is no longer valid because the term shown on it has elapsed.
- (4) “Issuer” means the business organization or financial institution, or its duly authorized agent, which issues a credit card.

- (5) “Receives” or “receiving” means acquiring possession or control or accepting as security for a loan a credit card.
- (6) “Revoked credit card” means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

## Sources & Authority

### 14 V.I. Code § 3001

### ***Practice Note***

**Definitions.** To avoid confusion, the Committee recommends that only those definitions that have specific application to the case pending before the Superior Court be used with the jury.

**Title.** Chapter 117 of Title 14 of the Virgin Islands Code is named the Credit Card Crime Act, as provided in 14 V.I.C. § 3016.

**Presumptions.** Under 14 V.I.C. § 3009, any presumption stated in the offense definitions for credit card crimes have “the following consequences”:

(1) When there is sufficient evidence of the facts which give rise to the presumption to go to the jury, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negates the presumed fact; and

(2) When the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the jury may regard the facts giving rise to the presumption as sufficient evidence of the presumed fact.

**Other Uncharged Actors.** The provisions of 14 V.I.C. § 3008 expressly state that – in any prosecution for violation of the credit card crimes chapter – it “it is not required to be established and it is no defense that a person, other than the defendant, who violated this chapter has not been convicted, apprehended or identified.”

**Other Criminal Charges.** The credit card Chapter of Title 14 includes an express alert to the Bench and Bar that these statutory provisions § 3014. Chapter not exclusive – they must “not be construed to preclude the applicability of any other provision of the criminal law of the Virgin Islands which presently applies or may in the future apply to any transaction which violates this chapter, unless such provision is inconsistent with the terms of this chapter.”

*Except as noted in the **Practice Note** to Instruction 16.19 implementing 14 V.I.C. § 3004, the Committee has not located any interpretive case law for the V.I. Code provisions that are embodied in the individual Instructions within this Chapter of the Model Jury Instructions.*

### **16.03 False Statement of Financial Condition or Identity**

The defendant is charged with the crime of making a false statement of financial condition or identity. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [made; caused to be made], either directly or indirectly, any false statement in writing as to a material fact; and
- (2) Defendant knew such statement to be false; and
- (3) Defendant intended that the statement be relied on regarding [his identity; the identity of any other person, firm, or corporation; his financial condition; the financial condition of any other person, firm, or corporation]; and
- (4) The statement was made for the purpose of procuring the issuance of a credit card; and
- (5) Defendant's actions took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 3002

#### ***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3002 has since 1972 provided as follows:

#### **§ 3002. False statement as to financial condition or identity**

A person who makes or causes to be made, either directly or indirectly, any false statement as to a material fact in writing, knowing it to be false and with intent that it be relied on respecting his identity or that of any other person, firm or corporation or his financial condition or that of any other person, firm or corporation, for the purpose of procuring the issuance of a credit card, violates this section and is subject to the penalties set forth in subsection (a) of section 3010 of this chapter.

## **16.05 Theft by Taking or Retaining Possession of Credit Card**

The defendant is charged with the crime of theft by taking or retaining possession of a credit card. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... took a credit card from the [person; possession; custody; control] of <name of cardholder> without the cardholder's consent;

... took a credit card from the [person; possession; custody; control] of <name of person> with knowledge that it was taken without the cardholder's consent;

... receives the credit card with intent to [use it; sell it; transfer it] to a person other than the issuer or the cardholder;

**and**

**(2) Defendant's actions took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 3003(a)**

### ***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3003(a) provides:

**(a) Theft by taking or retaining possession of card taken.** A person who takes a credit card from the person, possession, custody or control of another without the cardholder's consent or who, with knowledge that it has been so taken, receives the credit card with intent to use it, to sell it or to transfer it to a person other than the issuer or the cardholder is guilty of credit card theft and is subject to the penalties set forth in subsection (a) of section 3010 of this chapter. Taking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common law by trespassery taking, common law larceny by trick or embezzlement or obtaining property by false pretense, false promise or extortion.

**Categories of “Takings.”** As shown above, § 3003(a) states that taking a credit card without consent “includes obtaining it by conduct defined or known as statutory larceny, common law by trespassory taking, common law larceny by trick or embezzlement or obtaining property by false pretense, false promise or extortion.” Such language has not been included in the Model Instruction since the statute does not expressly require that the jury find the perpetrator guilty of any of the crimes mentioned, and further identification of those means of obtaining possession of the card could prove confusing to the jury.

### **16.07 Theft of a Credit Card Lost, Mislaid or Delivered by Mistake**

**The defendant is charged with the crime of theft of a credit card [lost; mislaid; delivered under a mistake as to the identity or address of the cardholder]. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant received a credit card that (he; she) knew to have been [lost; mislaid; delivered under a mistake as to the identity or address of the cardholder]; and**

**(2) Defendant retained possession of the card with intent to [use it; sell it; transfer it to a person other than the issuer or the cardholder]; and**

**(3) Defendant’s actions took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

14 V.I. Code § 3003(b)

#### ***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3003(b) provides:

**(b) Theft of credit card lost, mislaid or delivered by mistake.** A person who receives a credit card that he knows to have been lost, mislaid or delivered under a mistake as to the identity or address of the cardholder and who retains possession with intent to use it, sell it or to transfer it to a person other than the issuer or the cardholder is guilty of credit card theft and is subject to the penalties set forth in subsection (a) of section 3010 of this chapter.

## **16.09 Purchase or Sale of Credit Card of Another**

The defendant is charged with the crime of purchase or sale of the credit card of another. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [purchased; sold] a credit card of another person, specifically: *<name of cardholder>*; and
- (2) Defendant was not the issuer of the credit card and did not purchase the card from the issuer; and
- (3) Defendant's actions took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 3003(c)

### ***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3003(c) provides:

(c) **Purchase or sale of credit card of another.** A person other than the issuer who sells a credit card or a person who buys a credit card from a person other than the issuer violates this subsection and is subject to the penalties set forth in subsection (a) of section 3010 of this chapter.

## **16.11 Obtaining Control of Credit Card as Security for Debt**

The defendant is charged with the crime of obtaining control of a credit card as security for debt. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant obtained control over a credit card as security for debt; and
- (2) Defendant intended to defraud [the issuer of the card; a person or organization providing money, goods, services or anything else of value; any other person]; and

(3) Defendant's actions took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 3003(d)

### ***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3003(d) provides:

(d) **Obtaining control of credit card as security for debt.** A person who, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value or any other person, obtains control over a credit card as security for debt violates this subsection and is subject to the penalties set forth in subsection (a) of section 3010 of this chapter.

## **16.13 Dealing in Credit Cards of Another**

The defendant is charged with the crime of dealing in credit cards of another. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant received two or more credit cards issued in the name or names of different cardholders during any 12 month period; and

(2) Defendant was not the issuer of these credit cards; and

(3) Defendant had reason to know that these cards were [taken; retained] under circumstances which constitute [credit card theft; a violation of the law]; and

(4) Defendant's actions took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.



If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 3003(e)

#### ***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3003(e) provides:

**(e) Dealing in credit cards of another.** A person other than the issuer who, during any twelve (12) month period receives two (2) or more credit cards issued in the name or names of different cardholders, which he has reason to know were taken or retained under circumstances which constitute credit card theft or a violation of this law violates this subsection and is subject to the penalties set forth in subsection (b) of section 3010 of this chapter.

### **16.15 Forgery of a Credit Card**

The defendant is charged with the crime of forgery of a credit card. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... falsely [made; embossed] a purported credit card;

... altered a purported credit card;

**and**

**(2) Defendant intended to defraud** [a purported credit card issuer; a person or organization providing money, goods, services or anything else of value; any other person]; **and**

**(4) Defendant's actions took place on or about** *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

## 14 V.I. Code § 3003(f)

### ***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3003(f) provides:

**(f) Forgery of credit card.** A person who, with intent to defraud a purported issuer or a person or organization providing money, goods, services or anything else of value or any other person, falsely makes or embosses a purported credit card or alters such a credit card is guilty of credit card forgery, and is subject to the penalties set forth in subsection (b) of section 3010 of this chapter. A person other than the purported issuer who possesses two (2) or more credit cards which are falsely made or falsely embossed is presumed to have violated this subsection. A person falsely makes a credit card when he makes or draws in whole or in part a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing, or alters a credit card which was validly issued. A person falsely embosses a credit card when, without the authorization of the named issuer, he completes a credit card by adding any matter of substance, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

### **16.17 Forgery of Credit Card; Definitions; Presumptions**

In connection with the charge of with the crime of forgery of a credit card, the following definitions and presumptions apply:

- A. A person falsely makes a credit card when he makes or draws in whole or in part a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing, or alters a credit card which was validly issued.
- B. A person falsely embosses a credit card when, without the authorization of the named issuer, he completes a credit card by adding any matter of substance, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.
- C. A person other than the purported issuer who possesses two or more credit cards which are falsely made or falsely embossed is presumed to have committed the crime of forgery of the credit cards.

### **Sources & Authority**

14 V.I. Code § 3003(f)

## **16.19 Signing a Credit Card of Another**

The defendant is charged with the crime of signing a credit card of another. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant signed the credit card of another; and**
- (2) Defendant was not the cardholder or a person authorized by the credit card holder; and**
- (3) Defendant acted with the intent to defraud [the issuer; a person or organization providing money, goods, services or anything else of value; any other person]; and**
- (4) Defendant's actions took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

**14 V.I. Code § 3003(g)**

### ***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3003(g) provides:

**(g) Signing credit card of another.** A person other than the cardholder or a person authorized by him who, with intent to defraud the issuer or a person or organization providing money, goods, services or anything else of value or any other person, signs a credit card violates this subsection and is subject to the penalties set forth in subsection (a) of section 3010 of this chapter.

## **16.21 Fraudulent Use of a Credit Card**

The defendant is charged with the crime of fraudulent use of a credit card. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant used, for the purpose of obtaining** [money; goods; services; anything of value]

*\* Select element(s) charged in this case \**

... a credit card obtained or retained in violation of the law;

... a credit card which (he; she) knew was [forged; expired; revoked];

**and**

**(2) Defendant obtained** [money; goods; services; anything of value] **by**

*\* Select element(s) charged in this case \**

... representing, without the consent of the cardholder, that (he; she) was the holder of a specified credit card;

... representing that (he; she) is the holder of a credit card and such card has not in fact been issued;

**and**

**(3) Defendant intended to defraud** [the issuer; a person or organization providing money, goods, services or anything else of value; any other person]; **and**

**(4) Defendant's actions took place on or about** *<date>* **in** [this judicial division; *<name of judicial division>*].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 3004**

*Gov't of the Virgin Islands v. Graves*, 593 F.2d 223 (3d Cir. 1979)

### ***Practice Note***

Virgin Islands Code, Title 14, in § 3004 provides:

### **§ 3004. Fraudulent use of credit card**

A person who, with intent to defraud the issuer or a person or organization providing money, goods, services or anything else of value or any other person, uses, for the purpose of obtaining money, goods, services or anything else of value, a credit card obtained or retained in violation of this law or a credit card which he knows is forged, expired or revoked or who obtains money, goods, services or anything else of value by representing, without the consent of the cardholder, that he is the holder of a specified card or by representing that he is the holder of a card and such card has not in fact been issued, violates this subsection and is subject to the penalties set forth in subsection (a) of section 3010 of this chapter, if the value of all moneys, goods, services and other things of value obtained in violation of this subsection does not exceed one hundred (\$100) dollars in any six (6) month period. The violator is subject to the penalties set forth in subsection (b) of section 3010 of this chapter, if such value does exceed one hundred (\$100) dollars in any six (6) month period. Knowledge of revocation shall be presumed to have been received by a cardholder four (4) days after it has been mailed to him at the address set forth on the credit card or at his last known address by registered or certified mail, return receipt requested, and, if the address is more than five hundred (500) miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone or Canada, notice shall be presumed to have been received ten (10) days after mailing by registered or certified mail.

**Total “Sum of Goods, Services and Money Obtained.”** The Third Circuit held decades ago that – under the provisions of this Virgin Islands statute – the prohibition upon fraudulent use of credit cards differentiates between the lesser and greater penalties prescribed, and thus the proofs must include a focus on the total sum of all goods, services or money fraudulently obtained within a relevant six-month period rather than on the number of separate transactions in which defendant engaged. *Gov’t of the Virgin Islands v. Graves*, 593 F.2d at 227-28.

### **16.23 Unauthorized Use of a Government Credit Card**

**The defendant is charged with the crime of unauthorized use of a government credit card. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant was an [officer; employee] of [the Government of the Virgin Islands; a Government entity]; and**

**(2) Defendant used a government credit card inconsistent with the purpose authorized; and**

**(3) Defendant's actions took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 3004a**

#### ***Practice Note***

Title 14 V.I.C. § 3004a provides as follows:

#### **§ 3004a. Unauthorized use of government credit card**

Whoever, being an officer or employee of the Government of the Virgin Islands or instrumentality thereof uses a government credit card inconsistent with the purpose authorized is guilty of unauthorized use of a government credit card and is subject to a fine of not more than \$1000 or imprisoned for not more than one year, or both fine and imprisonment.

### **16.25 Fraud by a Person Authorized to Provide Goods or Services – Illegally Obtained or Possessed Cards; Forged, Revoked or Expired Cards**

The defendant is charged with the crime of fraud by a person authorized to provide goods or services. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant was authorized by a credit card issuer to furnish [money; goods; services; anything of value] upon presentation of a credit card by [the cardholder; any agent or employee of the cardholder]; and**

**(2) Defendant furnished [money; goods; services; anything of value] upon presentation of a credit card**

*\* Select element(s) charged in this case \**

... [obtained; retained] in violation of the law;  
... which the defendant knew was [forged; expired; revoked];

**and**

**(3) Defendant intended to defraud the [issuer; cardholder]; and**

**(4) Defendant's actions took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 3005(a)**

### ***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3005(a) provides:

#### **§ 3005. Fraud by person authorized to provide goods or services**

**(a) Illegally obtained or illegally possessed credit card; forged, revoked or expired credit card.** A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card by the cardholder or any agent or employees of such person who, with intent to defraud the issuer or the cardholder, furnishes money, goods, services or anything else of value upon presentation of a credit card obtained or retained in violation of this law or a credit card which he knows is forged, expired or revoked violates this subsection and is subject to the penalties set forth in subsection (a) of section 3010 of this chapter, if the value of all money, goods, services and other things of value furnished in violation of this subsection does not exceed one hundred (\$100) dollars in any six (6) month period. The violator is subject to the penalties set forth in subsection (b) of section 3010 if such value does exceed one hundred (\$100) dollars in any six (6) month period.

## **16.27 Fraud by a Person Authorized to Provide Goods or Services – Misrepresentation to Issuer**

The defendant is charged with the crime of fraud by a person authorized to provide goods or services through misrepresentation to the issuer of a credit card. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant was authorized by an issuer to furnish [money; goods; services; anything of value] **upon presentation of a credit card by** [the cardholder; any agent or employee of the cardholder]; **and**

(2) Defendant failed to furnish [money; goods; services; anything of value] **which** (he; she) **represented in writing to the issuer that** (he; she) **had furnished; and**

(3) Defendant intended to defraud [the issuer of the card; the cardholder]; **and**

(4) Defendant's actions took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 3005(b)

### ***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3005(b) provides:

#### **§ 3005. Fraud by person authorized to provide goods or services**

(b) **Misrepresentation to issuer.** A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card by the cardholder or any agent or employee of such person who, with intent to defraud the issuer or the cardholder, fails to furnish money, goods, services or anything else of value which he represents in writing to the issuer that he has furnished, violates this subsection and is subject to the penalties set forth in subsection (a) of section 3010 of this chapter, if the difference between the value of all money, goods, services and anything else of value actually furnished and the value represented to the issuer to have been furnished does not exceed five hundred (\$500) dollars in any six (6) month



period. The violator is subject to the penalties set forth in subsection (b) of section 3010 if such difference does exceed five hundred (\$500) dollars in any six (6) month period.

### **16.27 Possession of Machinery, Plates or Other Contrivances or Incomplete Credit Cards**

**The defendant is charged with the crime of possession of [machinery, plates or other contrivances designed to reproduce instruments purporting to be the credit cards of an issuer; incomplete credit cards]. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant was in possession of two or more credit cards that were incomplete in that some of the matter an issuer requires to appear on the credit card before it can be used by a cardholder, in addition to the cardholder's signature, had not yet been stamped, embossed, imprinted or written on it; and**

**(2) Defendant was not the cardholder for the cards possessed; and**

**(3) Defendant had the intent to complete the cards without the consent of the issuer; and**

**(4) Defendant knowingly possessed machinery, plates or any other contrivance with knowledge that they were designed to reproduce instruments purporting to be the credit cards of an issuer who had not consented to the preparation of such credit cards; and**

**(5) Defendant's actions took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

**14 V.I. Code § 3006**

#### ***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3006 provides:

**§ 3006. Possession of machinery, plates or other contrivance or incomplete credit card**

A person other than the cardholder possessing two (2) or more incomplete credit cards with intent to complete them without the consent of the issuer or a person possessing with knowledge of its character any machinery, plates or any other contrivance designed to reproduce instruments purporting to be the credit cards of an issuer who has not consented to the preparation of such credit cards, violates this subsection and is subject to the penalties set forth in subsection (b) of section 3010 of this chapter. A credit card is incomplete if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder, has not yet been stamped, embossed, imprinted or written on it.

**16.29 Receipt of Money, Goods, Services, or Anything of Value Obtained by Fraudulent Use of a Credit Card**

**The defendant is charged with the crime of receipt of [money; goods; services; anything of value] obtained by fraudulent use of a credit card. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant received [money; goods; services; anything of value] obtained in violation of the credit card fraud statute; and**

**(2) Defendant [knew; believed] that the [money; goods; services; thing of value] that (he; she) received was obtained in violation of the law; and**

**(3) Defendant's actions took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

**Sources & Authority**

14 V.I. Code § 3007

***Practice Note***

In the Virgin Islands, 14 V.I.C. § 3007 provides:

**§ 3007. Receipt of money, goods and services obtained by fraudulent use of credit cards**

A person who receives money, goods, services or anything else of value obtained in violation of section 3004 of this chapter, knowing or believing that it was so obtained, violates this section and is subject to the penalties set forth in subsection (a) of section 3010 of this chapter. A person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company which was acquired in violation of section 3004 without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of section 3004.

**Presumption Regarding Tickets.** As set forth here, the statute provides specifically that a person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company which was acquired in violation of § 3004 without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of § 3004. If the offense as charged relates to such tickets, this Instruction 16.29 may be adapted to address that context specifically.

**Chapter 17. CRIMINALLY INFLUENCED & CORRUPT ORGS. 14 V.I.C.  
§600-14**

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**17.01 Definitions**

As used in prosecutions under the Criminally Influenced and Corrupt Organizations Act, the following definitions apply:

- (a) “Alien corporation” means a corporation organized under laws other than the laws of the United States, the laws of any state of the United States, or the laws of the Territory of the Virgin Islands.
- (b) “Attorney General” means the Attorney General of the Virgin Islands, and/or any duly authorized Assistant Attorney General, or other duly authorized attorney employed by the Virgin Islands Department of Justice.
- (c) “Beneficial interest” includes:
  - (1) the interest of a person as beneficiary under a trust in which the trustee of the trust holds legal or record title to personal or real property;
  - (2) the interest of a person as beneficiary under any other trust arrangement under which any other person holds legal or record title to personal or real property for the benefit of such other person; or
  - (3) the interest of a person under any other form of express judiciary arrangement under which any other person holds legal or record title to personal or real property for the benefit of such person.

The term “beneficial interest” does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or a limited partnership.

- (d) “Civil proceeding” means any civil proceeding begun under this chapter.
- (e) “Criminal activity” means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in the crimes, offenses, violations or the prohibited conduct as variously described in the laws governing this jurisdiction including any Federal criminal law, the violation of which is a felony and, in addition, those crimes, offenses, violations or prohibited conduct as found in the Virgin Islands Code as follows:

- (1) Title 3, chapter 25, Virgin Islands Code, relating to false testimony;**
- (2) Title 5, chapter 343, Virgin Islands Code, relating to electronic surveillance;**
- (3) Title 9, chapter 9, Virgin Islands Code, relating to foreign banks;**
- (4) Title 9, chapter 11, Virgin Islands Code, relating to banking transfers and conduct;**
- (5) Title 9, chapter 15, Virgin Islands Code, relating to loans;**
- (6) Title 9, chapter 17, Virgin Islands Code, relating to disclosure of finance charges;**
- (7) Title 11, chapter 29, Virgin Islands Code, relating to monopolies and restraint of trade;**
- (8) Title 14, chapter 11, Virgin Islands Code, relating to arson and other burning of property;**
- (9) Title 14, chapter 19, Virgin Islands Code, relating to bribery and graft;**
- (10) Title 14, chapter 21, Virgin Islands Code, relating to burglary;**
- (11) Title 14, chapter 23, Virgin Islands Code, relating to children;**
- (12) Title 14, chapter 30, Virgin Islands Code, relating to criminally influenced and corrupt organizations;**
- (13) Title 14, chapter 33, Virgin Islands Code, relating to escape and rescue;**
- (14) Title 14, chapter 35, Virgin Islands Code, relating to extortion, oppression, and threats;**
- (15) Title 14, chapter 39, Virgin Islands Code, relating to forgery and counterfeiting;**
- (16) Title 14, chapter 41, Virgin Islands Code, relating to fraud and false statements;**
- (17) Title 14, chapter 45, Virgin Islands Code, relating to homicide;**
- (18) Title 14, chapter 53, Virgin Islands Code, relating to kidnapping;**
- (19) Title 14, chapter 55, Virgin Islands Code, relating to larceny and embezzlement;**
- (20) Title 14, chapter 57, Virgin Islands Code, relating to letters and messages;**
- (21) Title 14, chapter 61, Virgin Islands Code, relating to lotteries, gambling, and betting;**
- (22) Title 14, chapter 63, Virgin Islands Code, relating to malicious mischief;**
- (23) Title 14, chapter 67, Virgin Islands Code, relating to mayhem;**
- (24) Title 14, chapter 69, Virgin Islands Code, relating to vehicle auto theft;**

- (25) Title 14, chapter 75, Virgin Islands Code, relating to obstruction of justice;**
  - (26) Title 14, chapter 77, Virgin Islands Code, relating to perjury;**
  - (27) Title 14, chapter 81, Virgin Islands Code, relating to prostitution and related offenses;**
  - (28) Title 14, chapter 83, Virgin Islands Code, relating to public officers and employees;**
  - (29) Title 14, chapter 89, Virgin Islands Code, relating to records, documents, and reports;**
  - (30) Title 14, chapter 93, Virgin Islands Code, relating to robbery;**
  - (31) Title 14, chapter 95, Virgin Islands Code, relating to sabotage;**
  - (32) Title 14, chapter 105, Virgin Islands Code, relating to stolen property;**
  - (33) Title 14, chapter 113, Virgin Islands Code, relating to carrying or using dangerous weapons;**
  - (34) Title 14, chapter 117, Virgin Islands Code, relating to credit cards;**
  - (35) Title 18, chapter 27, Virgin Islands Code, relating to election offenses;**
  - (36) Title 19, chapter 29, Virgin Islands Code, relating to controlled substances;**
  - (37) Title 33, chapter 45, Virgin Islands Code, relating to offenses and forfeitures under Taxation and Finance;**
  - (38) Any conspiracy to commit any violation of the laws of this Territory relating to the crimes specifically enumerated above.**
- (f) “Criminal activity lien” means the notice under section 610 of this chapter.**
  - (g) “Criminal proceeding” means any criminal proceeding begun under this chapter.**
  - (h) “Enterprise” includes any individual, sole proprietorship, partnership, corporation, trust, or other legal entity, or any union, association or group of persons, associated in fact although not a legal entity, and includes illicit as well as licit enterprises and governmental as well as other entities.**
  - (i) “Innocent party” includes bona fide purchasers and victims.**
  - (j) “Pattern of criminal activity” means two or more occasions of conduct**
    - (1) that:**
      - (A) constitute criminal activity;**
      - (B) are related to the affairs of the enterprise; and**
      - (C) are not isolated; and**

**(2) where:**

- (A) at least one of the occasions of conduct occurred after November 9, 1990;**
- (B) the last of the occasions of conduct occurred within five years of the filing of the action under this chapter, or within the relevant period within the Statute of Limitations as provided in section 3541 of Title 5, Virgin Islands Code, if such statutory period shall be greater than five years; excluding any period of imprisonment served by any person engaging in the conduct, after a prior occasion of conduct; and**
- (C) for the purposes of section 606 [Criminal penalties] of this chapter, but not section 607 [Civil remedies] of this chapter, at least one of the occasions of conduct constituted a felony under the Virgin Islands Code, or, if committed subject to the jurisdiction of the United States, or any state of the United States, would constitute a felony under the Virgin Islands Code if committed in the Territory of the Virgin Islands.**

**(k) "Pecuniary value" means:**

- (1) anything of value in the form of money, a negotiable instrument, or a commercial interest, or anything else, the primary significance of which is economic advantage; or**
- (2) any property or service that has a value in excess of \$100.**

**(l) "Person" means any individual or entity holding or capable of holding a legal or beneficial interest in property.**

**(m) "Personal property" includes any personal property, or any interest in such personal property, or any right, including bank accounts, debts, corporate stocks, patents, or copyrights. Personal property and beneficial interest in personal property shall be deemed to be located where the trustee is located, where the personal property is located, or the instrument evidencing the right is located.**

**(n) "Principal" means a person who himself engages in conduct constituting a violation, or a person who is accountable as a "principal" under Title 14, chapter 1, section 11 of the Virgin Islands Code, for the conduct of another which conduct constitutes a violation.**

**(o) "Real property" means any real property or any interest in real property, including any lease of, or mortgage upon, real property. Real property and beneficial interest in real property shall be deemed to be located where the real property is located.**

- (p) “Special verdict” shall have its ordinary meaning, except that for the purposes of any proceeding brought under this chapter, all such special verdicts shall be rendered separately by the trial court, immediately after any verdict rendered by the jury, if any.
- (q) “United States Attorney” includes any United States Attorney, or any duly authorized Assistant United States Attorney.
- (r) “Trustee” includes:
- (1) any person acting as a trustee under a trust in which the trustee holds legal or record title to personal or real property; or
  - (2) any person who holds legal or record title to personal or real property, for which any other person has a beneficial interest; or
  - (3) any successor trustee.
- The term “trustee” does not include an assignee or trustee for an insolvent debtor, a guardian under the Veterans' Guardianship Act, or an executor, administrator, administrator with will annexed, testamentary trustee, conservator, guardian or committee, appointed by, or under the control of, or accountable to, a court.
- (s) The word “he” shall include the female as well as the male gender.

### **Sources & Authority**

#### **14 V.I. Code § 604**

*People v. McKenzie*, 66 V.I. 3 (V.I. Super. Ct. 2017); *Miller v. People*, 67 V.I. 827 (V.I. 2017); *In re Attorney General Subpoena re Terminix International USVI, LLC*, 67 V.I. 70 (V.I. Super. Ct. 2016); *Gumbs v. People*, 59 V.I. 784 (V.I. 2013); *In re Najawicz*, 50 V.I. 104 (V.I. Super. Ct. 2008); *United States v. West Indies Transp.*, 127 F.3d 299 (3d Cir. 1997).

### **Practice Note**

**Selected Definitions.** The Model Jury Instructions Committee recommends that only those definitions applicable to a given case be provided to the jury.

**Legal Background.** The Virgin Islands “Criminally Influenced and Corrupt Organizations” statute was enacted as 14 V.I.C. §§ 600 – 619 in 1990. Its purpose is “to curtail criminal activity and lessen its economic and political power in the Territory of the Virgin Islands by establishing new penal prohibitions and providing to law enforcement and the victims of criminal activity new civil sanctions and remedies.” 14 V.I.C. § 601. These provisions are to



be “liberally construed” to achieve those goals. 14 V.I.C. § 602. The Legislature included specific findings explaining the purpose of these provisions:

**§ 603. Legislative findings**

(a) Sophisticated criminal activity is diversified and diverts substantial sums from the Territory of the Virgin Islands' legitimate markets through fraud and corruption.

(b) In addition to the more traditional criminal offenses, sophisticated criminal activity can involve the illegal manipulation of legitimate business and other enterprises by the use of fraudulent schemes and practices.

(c) The money and power generated by sophisticated criminal activity can also be used to infiltrate legitimate business, to invest in real and personal property through trusts, alien corporations and fictitious names, and to subvert democratic and law enforcement processes in the Territory of the Virgin Islands and elsewhere.

(d) Sophisticated criminal activity develops and flourishes when the criminal and other sanctions available to combat it are unnecessarily limited in scope and impact.

(e) Traditional law enforcement strategies and techniques that concentrate on bringing criminal penalties to bear on individual offenders for the commission of specific offenses, and that do not focus on offenders involved in sophisticated criminal activity, and on their influence on various legal and illegal organizations and patterns of such sophisticated criminal activity, and that do not enlist the assistance of private enforcement through the use of civil sanctions are inadequate to control such sophisticated criminal activity. Comprehensive strategies must be developed, evidentiary, procedural and substantive laws must be strengthened, and criminal penalties and civil sanctions must be enhanced.

14 V.I.C. § 604. The Attorney General is expressly authorized to investigate possible violations of the Criminally Influenced and Corrupt Organizations Act, 14 V.I.C. § 612, and may utilize subpoena procedures in that process. *See In re Attorney General Subpoena re Terminix International USVI*, 67 V.I. at 72 et seq.. Granting of immunity in this process is separately addressed in 14 V.I.C. § 613.

**Proof of At Least One Felony.** It was held early in the years after enactment of the statute that it requires the People to prove commission of at least one felony. *Gumbs v. People*, 59 V.I. at 788; *United States v. West Indies Transp.*, 127 F.3d at 315.

**Continuity Not Required.** The Superior Court has held that “continuity” is not required to establish a “pattern” under the Virgin Islands Criminally Influenced and Corrupt Organizations Act (CICO). *People v. McKenzie*, 66 V.I. at 12-14.

**Sufficient Averments.** An information charging conspiracy under the Virgin Islands Criminally Influenced and Corrupt Organizations Act, contained sufficient facts necessary to

demonstrate the existence of an “association-in-fact” enterprise because it specifically detailed each defendant's role in committing the acts and expressly provided the relation each act had to the overall purpose of manipulating the bidding process at a government-sponsored property tax auction of real property. *People v. McKenzie*, 66 V.I. at 12..

**Conspiracies and Attempts to Violate “CICO.”** Title 14 of the V.I. Code, § 605(d) makes it clear that a defendant may be charged with conspiracy to violate the Criminally Influenced and Corrupt Organizations Act, or with an attempt to do so.

**Criminal Penalties and Related Remedies.** Title 14 provides in § 606 the governing penalties for violation of the Criminally Influenced and Corrupt Organizations chapter of the Virgin Islands Code, including, fines, periods of incarceration, and forfeiture of property, as well as issuance of temporary restraining orders, injunctions, bonding requirements, appointment of receivers, and related remedies. *See generally In re Najawicz*, 50 V.I. 109-10. Restitution may be ordered. *Miller v. People*, 67 V.I. 848-49. The forfeiture remedy is implemented in § 608 of Title 14 of the V.I. Code. Imposition of liens and notices of lis pendens are available under the provisions of 14 V.I.C. § 610.

**Registration of Alien Corporations.** As part of the provisions of the Virgin Islands Criminally Influenced and Corrupt Organizations Act, specific provisions are set forth requiring “alien corporations” to register if they desire to acquire of record any real or personal property located in the Territory. 14 V.I.C. § 611.

**Civil Actions.** It has been held that a civil plaintiff may state a cause of action under the Criminally Influenced and Corrupt Organizations Act if it can be alleged that the defendant’s conduct caused “injury.” *Charleswell v. Chase Manhattan Bank*, 308 F. Supp. 2d 545 (D.V.I. 2004). *See Gov’t of the United States V.I. v. Servicemaster Co.*, 2019 V.I. LEXIS 122 (V.I. Super. Ct. Nov. 27, 2019). *See generally* 14 V.I.C. § 607, entitled “Civil remedies.”

### **17.03 Pattern of Criminal Activity**

**The defendant is charged with the crime of engaging in a pattern of criminal activity. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant was [employed by; associated with] any “enterprise”, as that term has been defined for you;**
- (2) Through a “pattern of criminal activity”, as I have defined that term for you, the defendant**

*\* Select element(s) charged in this case \**

... [conducted; participated in], directly or indirectly, the affairs of the enterprise;

- ... [acquired; maintained], directly or indirectly, any [interest in; control of], any [enterprise; real property];
- ... received any proceeds derived, directly or indirectly, from a pattern of criminal activity in which he participated as a principal;
- ... [used; invested], directly or indirectly, any part of the proceeds derived from a pattern of criminal activity in which he participated as a principal;
- ... [used; invested] any proceeds derived from the investment or use of any proceeds that were derived, directly or indirectly, from a pattern of criminal activity in which he participated as a principal, in the acquisition of [any title to; any right, interest, or equity in], real property;
- ... [used; invested] any proceeds derived from the investment or use of any proceeds that were derived, directly or indirectly, from a pattern of criminal activity in which he participated as a principal, in the establishment or operation of any enterprise;

**and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 605**

### **Practice Note**

**Open Market Securities Transactions of Less than One Percent of the Shares.** Section 605(c) specifically provides that a purchase of securities on the open market with intent to make an investment, and without the intent of controlling or participating in the control of the issuer, or of assisting another to do so, is not unlawful under the statute, if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of criminal activity do not amount in the aggregate to one percent (1%) of the outstanding securities of any one class and do not confer, either in law or in fact, the power to elect one or more directors of the issuer of the securities.

## Chapter 18. DANGEROUS WEAPONS 14 V.I.C. § 2251 – 2258a

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### 18.01 Definitions

For purposes of a prosecution for carrying or using a dangerous weapon,

“Switchblade knife” means any knife which has a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife; and the term “gravity knife” means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.

“Crime of violence” shall have the same definition as that contained in Title 23, section 451(g) of this Code.

“Machine gun” means any firearm, as defined in Title 23, section 451(f) of this Code, which shoots automatically more than 12 shots without reloading.

“Sawed-off shotgun” means any firearm, as defined in Title 23, section 451(f) of this Code, designed to fire through a smooth bore either a number of ball shot or a single projectile, the barrel of which is less than 20 inches in length.

The term “possession” as used in this section means both actual and constructive possession.

“Constructive possession” means having the power and the intention at any given time to exercise dominion or actual control over the firearm either directly or through another person.

“Assault weapon” means any firearm as defined in title 23, chapter 5, section 451(f) of this Code which will, with a single pull of the trigger, discharge ammunition until the trigger, or other activating release is released or until the ammunition is expended.

“Automatic weapon” means any firearm, as defined in title 23, chapter 5, section 451(f) of this Code which has the capacity to fire more than one shot without manually reloading with a single pull of the trigger.

“Semi-Automatic weapon” means any firearm, as defined in title 23, chapter 5, section 451(f) of this Code which has the capacity to fire one shot with each pull of the trigger without manually reloading.

“Conversion kit” means any part or combination of parts designed and intended for use in converting any firearm into an automatic weapon and any combination of parts from which an automatic weapon can be assembled if the parts are in the possession or under the control of a person.

“Assault Rifle” means a selective-fire rifle that uses an intermediate cartridge, including, but not limited, to the following characteristics:

- (A) It must be an individual weapon with provision to fire from the shoulder (i.e., a buttstock);
- (B) It must be capable of selective fire;
- (C) It must have an intermediate-power cartridge—more power than a pistol but less than a standard rifle or battle rifle; and
- (D) Its ammunition must be supplied from a detachable magazine.

### **Sources & Authority**

14 V.I. Code § 2251(b); § 2253(d)

### ***Practice Note***

The text of 14 V.I.C. § 2251(b) defining “switchblade knife” is set forth verbatim in the definitional Instruction above.

The other definitions in this instruction are set forth verbatim from 14 V.I.C. § 2253(d).

It is recommended that only those definitions involved in the pending case be utilized, to avoid confusing the jury with irrelevant or unnecessary concepts.

### **18.03 Carrying or Using Dangerous Weapons**

The defendant is charged with the crime of carrying or using dangerous weapons. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [had; possessed; bore; transported; carried; had under (his; her) proximate control] any instrument or weapon of the kind commonly known as [a blackjack; a billy; a sandclub; metal knuckles; a bludgeon; a switchblade knife; a gravity knife];

... intended to use against another person [a dagger; a dirk; a dangerous knife; a razor; a stiletto; a[n] *<name of any other dangerous or deadly weapon>*], that (he; she) [had; possessed; bore; transported; carried; had under (his; her) proximate control];

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 2251(a)

#### ***Practice Note***

The text of 14 V.I.C. § 2251(a) is as follows:

**§ 1382. Carrying or using dangerous weapons**

(a) Whoever—

(1) has, possesses, bears, transports, carries or has under his proximate control any instrument or weapon of the kind commonly

known as a blackjack, billy, sandclub, metal knuckles, bludgeon, switchblade knife or gravity knife; or

(2) with intent to use the same unlawfully against another, has, possesses, bears, transports, carries or has under his proximate control, a dagger, dirk, dangerous knife, razor, stiletto, or any other dangerous or deadly weapon shall—

(A) be fined \$5,000 and imprisoned not more than five (5) years; or

(B) if he has previously been convicted of a felony, or has, possesses, bears, transports, carries or has under his proximate control, any such weapon during the commission or attempted commission of a crime of violence (as defined in section 2253(d)(1) hereof) shall be fined \$10,000 and imprisoned not more than fifteen (15) years, which penalty shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

**Penalties.** The penalties for violation of this statute are prescribed by subsection (a)(2)(A) and (B) and vary depending on prior conviction history. Subdivision (a)(2)(B) also provides that for previous felons the fine or penalty prescribed “shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.”

**Confiscation of the Weapon.** Title 14 V.I.C. § 2252 provides that when a defendant violates §§ 298, 2251 or 2253, or any other provision of law prohibiting the possession, bearing, transporting, carrying or effective control of a firearm, ammunition or other weapon will, in addition to the punishment therein prescribed, also have said firearm, ammunition or other weapon confiscated to the Government of the Virgin Islands.

**Electric Weapons Used by Police Officers.** Under 14 V.I.C. § 2251(c), the crimes set forth in this statute are not applicable to the use of electric weapons or devices by peace officers in the conduct of their lawful duties or persons licensed to carry an electric weapon or device.

**Validity.** The Supreme Court has held that the rule of lenity is not a basis for holding V.I. Code § 2251 void, since its plain text makes it clear that the Legislature intended for an individual who commits a crime of violence and uses a deadly weapon when doing so to be punished under both § 2251 and for committing the underlying crime of violence. *Ward v. People*, 58 V.I. 277, 287 (V.I. 2013).

**Non-Exhaustive List.** The statute does not define dangerous weapons; rather, it simply provides a non-exhaustive list of some weapons that violate the statute, which includes any deadly or dangerous weapon. *Connor v. People*, 59 V.I. 286, 295 (V.I. 2013). For example, the federal district court found that a crowbar could constitute a dangerous or deadly weapon because when defendant struck the victim with the crowbar, it became a weapon that was likely to cause death or serious injury. *Phipps v. Gov't of the Virgin Islands*, 241 F.Supp.2d 507 (D.V.I. 2003).

**Relation to § 104; Dual Punishment.** The Supreme Court has noted that § 2251 is not only more recent than 14 V.I.C. § 104, but it is the more specific provision, and expresses a clear and unambiguous intent on the part of the Legislature, that whenever an individual is convicted under both § 2251 and a crime of violence, punishment is required for both of those offenses. The Legislature thus established an exception to the general rule set forth in § 104 allowing individuals to be punished for both violating § 2251 and the underlying crime of violence. *Ward v. People*, 58 V.I. 277 (V.I. 2013).

**Lesser Included Offenses.** The federal courts, decades ago, held that the Virgin Islands dangerous weapon statute makes possession of a dangerous weapon a separate offense from a crime of violence perpetrated with a dangerous weapon, and therefore the crime of possession cannot be considered a lesser included offense of possession during a crime of violence. Gov't of the *Virgin Islands v. Williams*. 1987 U.S. Dist. LEXIS 16786 (D.V.I. 1987). Possession of dangerous weapon is not a lesser included offense of murder. *Gov't of Virgin Islands v. Smith*, 558 F.2d 691 (3d Cir. 1977).

**Crime of Violence.** The Superior Court has concluded that use of the definite article “the” in the last sentence of the statute concerning using a dangerous weapon during the commission of a crime of violence confirms that if a jury finds any crime of violence, the court must impose a sentence for a violation of the statute separate from the punishment for whichever underlying crime of violence is found. What a trier-of-fact may consider to be a crime of violence in any given case is appropriately addressed through the jury instructions. *People v. Colon*, 60 V.I. 149 (V.I. Super. Ct. 2014).

**Multiple Offenses?** The Supreme Court has ruled that without crimes of violence distinguishing the separate counts of possession (and separate victims), conviction for multiple counts of possession pertaining to the same weapon during the same event violated the statute pertaining to multiple punishments. *Powell v. People*, 59 V.I. 444 (V.I. 2013).

**Exact Nature of the Firearm.** It was not necessary under V.I. Code § 2251(a)(2)(B) that the People prove the specific type of firearm the defendant possessed in order to sustain a conviction. *Estick v. People*, 62 V.I. 604 (V.I. 2015).

**Actual Use of the Firearm.** The Supreme Court has held that nothing in the statute requires that a defendant actually use the weapon during the commission or attempted commission of a crime of violence, so long as there is evidence that defendant possessed his firearm during the crime. *Connor v. People*, 59 V.I. 286 (V.I. 2013).

**Broken Bottle Example.** It was proper to find defendant guilty of using or having a dangerous weapon where the evidence showed that she searched for a bottle, broke it to create a sharp-edged weapon, and approached the women with whom she had previously had an altercation with the intent to attack one of them. *Powell v. People*, 59 V.I. 444 (V.I. 2013).

**Kitchen Knife Example.** There was sufficient evidence to support convictions for unlawful use of a dangerous weapon during the commission of a crime of violence where the victim testified that defendant held a kitchen knife to her throat and told her to drink bleach or he would cut her, *Francis v. People*, 57 V.I. 201 (V.I. 2012).



**Everybody Had a Gun.** For a conviction for unauthorized use of a firearm during the commission of a crime of violence, there was sufficient evidence when a witness testified that everyone in the witness's car, including defendant, had a gun except the witness, that defendant and his companions masked their faces and headed toward the community with their firearms, that the witness then heard gunfire, and that defendant called the witness after the shooting stopped, then fled from police; furthermore, spent shell casings found immediately after the shooting matched the type of bullets found in the magazine clip that was discovered in the back seat of the witness's car. *People v. Thompson*, 57 V.I. 342 (V.I. 2012).

**Intent to Use the Weapon.** The words “with intent to use the same unlawfully against another” embody a pivotal element of the crime under 14 V.I.C. § 2251(a)(2). *Nanton v. People*, 52 V.I. 466 (V.I. 2009).

**Dangerous or Deadly.** Variance between the information's reference to a “dangerous” weapon and the instruction's reference to a “deadly” one was not prejudicial to defendant, since the change in terminology required the People to prove more than what was charged—that is, they had to prove that the weapon was not simply dangerous but was also deadly. *Connor v. People*, 59 V.I. 286 (V.I. 2013).

**Multiplicity.** The Superior Court has concluded that multiple charges of using a dangerous weapon during the commission of murder were multiplicitous under the Supreme Court of the Virgin Islands' decisions in *Nanton* and *Powell*, because the various counts required proof of exactly the same elements and were not at all dependent upon which crime of violence was asserted. Even if the “crime of violence” requirement was an element of the crime under the United States Supreme Court's *Alleyne* decision, the charges were still multiplicitous. *People v. Colon*, 60 V.I. 149 (V.I. Super. Ct. 2014).

## **18.05 Unauthorized Carrying of Firearm**

**The defendant is charged with the crime of carrying a firearm without authorization of law. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant [had; possessed; bore; transported; carried], either actually or constructively, openly or concealed, any firearm, whether loaded or unloaded; and**
- (2) Defendant was not authorized by law to do so; and**
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**14 V.I. Code § 2253(a)**

### ***Practice Note***

The text of 14 V.I.C. § 2253(a) is as follows:

**§ 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions**

(a) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either, actually or constructively, openly or concealed any firearm, as defined in Title 23, section 451(f) of this code, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than ten years and shall be fined not less than \$10,000 nor more than \$15,000 or both the fine and imprisonment, except that if such person shall have been convicted of a felony in any state, territory, or federal court of the United States, or if such firearm or an imitation thereof was had, possessed, borne, transported or carried by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as defined in subsection (d) hereof, then such person shall be fined \$25,000 and imprisoned not less than fifteen (15) years nor more than twenty (20) years. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the felony or crime of violence.

**Firearm Definition.** This statute invokes the definition of the term “firearm” found in 23 V.I.C. § 451(f), which reads in its entirety: “(f) ‘*Firearm*’ means any device by whatever name known, capable of discharging ammunition by means of gas generated from an explosive composition, including any air gas or spring gun or any ‘BB’ pistols or ‘BB’ guns that have been adapted or modified to discharge projectiles as a firearm.”

**Imitation Weapon.** The Third Circuit has held that although 14 V.I.C. § 2253(a) does not define the term “imitation,” the plain and ordinary meaning of that term is “something produced as a copy,” and it shares the same Latin root as the verb “imitate,” which means “to be or appear like.” Thus, the statute imposes punishment on anyone who, while committing or attempting to

commit a crime of violence, possesses an object that is produced as a copy of, or appears like, a firearm. *United States v. Fontaine*, 697 F.3d 221 (3d Cir. V.I. 2012).

**Elements.** The Territorial Court concluded a quarter century ago that the elements of the offense of unauthorized possession of a firearm under § 2253(a) are that the defendant: (1) without authority of law; (2) possessed; (3) a firearm; (4) openly or concealed, on or about his person, and loaded or unloaded; since these are the elements specifically mandated by the Legislature as necessary to constitute the offense of unauthorized possession of a firearm, none of them can be ignored or overlooked by the Government once it decides to charge the defendant with such an offense. *Gov't of the V.I. v. Smalls*, 32 V.I. 157 (Terr. Ct. 1995). See *United States v. McKie*, 112 F.3d 626 (3<sup>d</sup> Cir. 1997) (discussing history and intent of the statute).

**Compatibility with § 104.** The Supreme Court has concluded that § 2253(a) does not conflict with 14 V.I.C. § 104 or the Revised Organic Act, and the mere fact that 14 V.I.C. § 2253(a) criminalizes the possession of firearms does not mean that the Legislature intended to exclude firearms from the definition of a deadly weapon or from statutes criminalizing the use of a deadly weapon. *Phillip v. People*, 58 V.I. 569 (V.I. 2013); *Augustine v. People*, 55 V.I. 678 (V.I. 2011). See *Wallace v. People*, 2019 V.I. 24 (V.I. 2019).

**Grace Period.** As of 2011 it was held that 23 V.I.C. § 455(e) creates a “grace period” whereby a licensed gun owner has ninety days within which to renew his license before he can be charged with the crime of unauthorized possession of a firearm, codified at 14 V.I.C. § 2253. *Hightree v. People*, 55 V.I. 947 (V.I. 2011).

**Test Firing Not Required.** The Third Circuit concluded a few years ago that the fact that an AK-47 rifle had not been test fired or shown to be capable of firing a bullet did not prevent a conviction under the statute, where a postal inspector testified that he “dry-fired” the weapon, and a special agent testified that he test-fired it and that it was operable. *United States v. Mike*, 655 F.3d 167 (3d Cir. 2011).

**Operability.** Because the statute does not require that the People prove that a firearm was operable, the trial court did not err in neglecting to instruct the jury that it had to find that the firearm was operable in order to convict defendant of unauthorized use of a firearm during the commission of a crime of violence. *Tyson v. People*, 59 V.I. 391 (V.I. 2013); *Fontaine v. People*, 56 V.I. 660 (V.I. 2012).

**Licensing of the Person.** Virgin Islands statutes establish that it is the person, rather than the firearm, that is subject to licensing. Because defendant was not authorized to possess a firearm either by virtue of his position or by a license, the trial court did not err in failing to instruct that the law required proof that the firearm itself was not licensed. *Phillip v. People*, 58 V.I. 569 (V.I. 2013). In another case, there was sufficient evidence that defendant unlawfully possessed a firearm, as the People were not required to prove that the particular firearm used to commit the offenses was unregistered. Even if someone else had a license to possess the firearm

in question, defendant was prohibited from possessing the firearm without obtaining his own license. *Simmonds v. People*, 59 V.I. 480 (V.I. 2013). Under Virgin Islands law, firearms licenses were issued to individuals, and those licenses were not transferable. Therefore, there was sufficient evidence to support defendant's firearms convictions when the People proved that defendant had no license; the People did not need to prove that the firearm was not registered. *Joseph v. People*, 60 V.I. 338 (V.I. 2013).

**Variance From Charge in the Information.** On a charge of unlawful possession of a firearm under 14 V.I.C. § 2253(a), the trial court's addition of the “during the commission of a crime of violence” language in the final jury instructions constituted a variance between the information and the verdict in violation of the Sixth Amendment, precluding the trial court from imposing the enhanced sentence. *Ambrose v. People*, 56 V.I. 99 (V.I. 2012).

**Proof of Possession.** Evidence that defendant shot the victim several times, coupled with the fact that defendant did not have a license to possess a firearm at the time of the shooting, was sufficient to support his conviction for unauthorized possession of a firearm during a crime of violence. *Woodrup v. People*, 63 V.I. 696 (V.I. 2015). Evidence of possession was sufficient when witnesses all testified to seeing defendant carry a gun during a robbery, and the People were not required to prove that the firearm was operable or to produce it in court. *Percival v. People*, 62 V.I. 477 (V.I. 2015).

**Proof of Lack of Authorization; Confrontation.** Testimony from a witness that she searched firearms records for both the St. Croix and St. Thomas Districts, revealing that defendant had no firearms license, and produced two absence-of-entry forms, was sufficient to support defendant's conviction for unauthorized possession of a firearm, although reversal was ultimately required because this was the only evidence supporting the conviction and admission of the forms violated the Confrontation Clause. *Cascen v. People*, 60 V.I. 392 (V.I. 2014). *See also Fontaine v. People*, 59 V.I. 640 (V.I. 2013). On the other hand, in a case where there was no evidence as to whether defendant had a license to carry a firearm in the St. Croix District, only that he had no license in other areas, there was insufficient evidence as to whether he was licensed to possess a firearm in the Virgin Islands. *Tyson v. People*, 59 V.I. 539 (V.I. 2013).

**Constructive Possession.** Evidence supported a conviction for unauthorized possession of a firearm under § 2253 based on constructive possession, since he defendant rented and extensively used the vehicle where the gun was found; his wallet was in the console where the gun was found, within arm's reach; and defendant surreptitiously fumbled around in the vehicle after an officer ordered him to leave it. *Alfred v. People*, 56 V.I. 286 (V.I. 2012).

**No Lesser Offense.** The federal district court held 25 years ago that there is no lesser included offense to the crime of unauthorized possession of a firearm, because the possession of a firearm during the commission or attempted commission of a crime of violence merely serves to enhance the penalty for unauthorized possession of a firearm. *United States v. Bruney*, 30 V.I. 360 (D.V.I. 1994).

**Constitutionality.** Imposition of a penalty under § 2253(a) for unauthorized possession of a firearm during the commission of a crime of violence in addition to the penalty provided for the commission of the felony or crime of violence did not violate the Double Jeopardy Clause. *Woodrup v. People*, 63 V.I. 696 (V.I. 2015). And at least one case has rejected a claim that the that Second Amendment conflicts with statutes requiring a license to possess a handgun. *Hightree v. People*, 55 V.I. 947 (V.I. 2011). *See also People v. James*, 54 V.I. 45 (V.I. 2010)(rejecting vagueness and Second Amendment challenges).

**Common Law Justification Defense.** The Third Circuit has held that the common-law justification defense applies to unlawful-possession prosecutions in the Virgin Islands under § 2253(a), and because a justification defense not negate an element of the offense, the burden rests with a defendant to establish his eligibility for the instruction by a preponderance of the evidence. *Gov't of the Virgin Islands v. Lewis*, 620 F.3d 359 (V.I. 2010).

**Multiple Convictions.** The Third Circuit recently held that 14 V.I.C. § 104 precluded multiple convictions under § 2253(a) if they arise from a single act of having an unauthorized firearm. *United States v. Hodge*, 870 F.3d 184 (3d Cir. 2017). Similarly, the Supreme Court of the Virgin Islands concluded that a defendant should have been convicted of only one count of unauthorized use of a firearm during a crime of violence, as the crime of possession was a single act. Although there were arguably two victims of the crime, possession itself was the crime prohibited, and defendant possessed the same firearm throughout the duration of the shooting. *Tyson v. People*, 59 V.I. 391 (V.I. 2013). *See generally Titre v. People*, 70 V.I. 797 (V.I. 2019).

**Minimum Sentences; Parole.** Title 14 V.I.C. § 2254 provides minimum sentences and addresses the unavailability of probation or parole for persons convicted of violations under § 2251 and § 2253.

### **18.07 Unauthorized Carrying of Firearm by [During Crime of Violence or By a Previously Convicted Felon]**

**The defendant is charged with the crime of unauthorized carrying of [a firearm; an imitation of a firearm] [during the commission of a crime of violence; having also previously been convicted of a felony]. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant [had; possessed; bore; transported; carried], either actually or constructively, openly or concealed, any firearm or an imitation thereof; and**
- (2) Defendant**

*\* Select element(s) charged in this case \**

... had previously been convicted of a felony in any state, territory or federal court of the United States;

... [had; possessed; bore; transported; carried; proximately controlled] the firearm or an imitation thereof during the commission or attempted commission of a crime of violence;

**and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 2253(a)**

### ***Practice Note***

The text of 14 V.I.C. § 2253(a) is as follows:

#### **§ 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions**

(a) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either, actually or constructively, openly or concealed any firearm, as defined in Title 23, section 451(f) of this code, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than ten years and shall be fined not less than \$10,000 nor more than \$15,000 or both the fine and imprisonment, except that if such person shall have been convicted of a felony in any state, territory, or federal court of the United States, or if such firearm or an imitation thereof was had, possessed, borne, transported or carried by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as defined in subsection (d) hereof, then such person shall be fined \$25,000 and imprisoned not less than fifteen (15) years nor more than twenty (20) years. The foregoing applicable penalties provided for violation of this section shall be in addition to the

penalty provided for the commission of, or attempt to commit, the felony or crime of violence.

See Practice Note to the preceding Instruction for relevant materials.

### **18.09 Definition of Crime of Violence for § 2253 Offenses**

A “crime of violence” for these purposes, as defined by statute, means the crime of, or the attempt to commit, murder in any degree, voluntary manslaughter, rape, arson, discharging or aiming firearms, mayhem, kidnapping, assault in any degree, robbery, burglary, unlawful entry or larceny.

#### **Sources & Authority**

23 V.I. Code § 451(g)

#### ***Practice Note***

The text of 23 V.I.C. § 451(g), incorporated by express reference in 14 V.I.C. § 2253, is set forth verbatim in the definitional Instruction above.

### **18.11 Unauthorized Carrying of Machine Gun, Assault Rifle, or Sawed-off Shotgun**

The defendant is charged with the crime of carrying a [machine gun; assault rifle; sawed-off shotgun] without authorization of law. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [had; possessed; bore; transported; carried], either actually or constructively, openly or concealed, whether loaded or unloaded, any [machine gun; assault rifle; sawed-off shotgun]; and
- (2) Defendant was not authorized by law to do so; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

14 V.I. Code § 2253(b)

### ***Practice Note***

The text of 14 V.I.C. § 2253(b) is as follows:

**§ 2253. Carrying of firearms; openly or concealed; evidence of intent to commit crime of violence; definitions**

(b) Whoever, unless otherwise authorized by law, has, possesses, bears, transports or carries either, actually or constructively, openly or concealed any machine gun, assault rifle or sawed-off shotgun, as defined in subsection (d)(2) and (3) of this section, loaded or unloaded, may be arrested without a warrant, and shall be sentenced to imprisonment of not less than fifteen years nor more than twenty years and shall be fined \$25,000, except that if such person shall have been convicted of a felony in any state, territory or federal court of the United States, or if such machine gun, assault rifle or sawed-off shotgun or an imitation thereof was held, possessed, borne, transported by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as herein defined, then such person shall be fined \$50,000 and imprisoned not less than twenty (20) years nor more than twenty-five (25) years. The foregoing applicable penalties provided for violation of this section shall be in addition to the penalty provided for the commission of, or attempt to commit, the crime of violence.

### **18.13 Definition of Certain Weapons for § 2253 Offenses**

**“Machine gun” means any firearm which shoots automatically more than 12 shots without reloading.**

**“Sawed-off shotgun” means any firearm designed to fire through a smooth bore either a number of ball shot or a single projectile, the barrel of which is less than 20 inches in length.**

**“Assault weapon” means any firearm which will, with a single pull of the trigger, discharge ammunition until the trigger, or other activating release is released or until the ammunition is expended.**

## Sources & Authority

14 V.I.C. § 2253; 23 V.I. Code § 451



### ***Practice Note***

The text of 14 V.I.C. § 2253(d) is set forth verbatim in the definitional instruction above for these categories of weapons.

#### **18.15 Possession of Firearm and Automatic Conversion Kit**

The defendant is charged with the crime of possessing a firearm and a conversion kit for making it into an automatic weapon. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [had; possessed; bore; transported; carried], **either openly or concealed**, [on or about his person; under his control in any vehicle of any description], **any** [firearm; weapon], **loaded or unloaded, that can be converted into an automatic weapon; and**
- (2) **Defendant** [had; possessed; bore; transported; carried] **at that time a conversion kit to convert such** [firearm; weapon] **into an automatic weapon; and**
- (2) **Defendant was not authorized by law to do so; and**
- (3) **This conduct took place on or about** <date> **in** [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 2253(e)

### ***Practice Note***

The text of 14 V.I.C. § 2253(e) is as follows:

#### **§ 2253.**

(e) Whoever, unless otherwise authorized by law, has, possesses, bears, transport or carries, either openly or concealed, on or about his person, or under his control in any vehicle of any description any firearm as defined in title 23 chapter 5, section 451(f) of this Code, or any weapon that can be converted into an

automatic weapon as defined in title 23, chapter 5, section 451(j) and a conversion kit, loaded or unloaded, may be arrested without warrant, and shall be sentenced to imprisonment of not less than fifteen years nor more than 20 years and shall be fined not more than \$25,000, except that if such person has been convicted of a felony in any state, territorial or federal court of the United States, or if the automatic weapon or an imitation thereof was held, possessed, borne, transported by or under the proximate control of such person during the commission or attempted commission of a crime of violence, as defined in subsection (d)(1), then such person shall be subject to have the crime committed reclassified and a prison sentence imposed as follows:

- (1) in the case of commission of a felony of the first degree, a life sentence;
- (2) in the case of commission a felony of the second degree, to felony of a first degree and a minimum sentence of 20 years; and
- (3) in the case of commission a felony of the third degree, to a felony of the second degree a minimum of 15 years.

## **18.17 Definition of Automatic Weapons and Conversion Kits for § 2253 Offenses**

**“Automatic weapon” means any firearm which has the capacity to fire more than one shot without manually reloading with a single pull of the trigger.**

**“Conversion kit” means any part or combination of parts designed and intended for use in converting any firearm into an automatic weapon and any combination of parts from which an automatic weapon can be assembled if the parts are in the possession or under the control of a person.**

### **Sources & Authority**

**14 V.I.C. § 2253; 23 V.I. Code § 451**

### ***Practice Note***

The text from 14 V.I.C. § 2253(d) is set forth verbatim in the definitional instruction above for these categories of weapons.

## **18.19 Firearms Offenses Within 1000 Feet of School, Playground, Public Housing Facility or Other Areas**

The defendant is charged with the crime of [carrying; transporting], [on (his; her) person; in a vehicle], a [firearm; assault weapon; or convertible automatic weapon] within [1000; one thousand] feet of a designated location. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [had; possessed; bore; transported; carried], **either openly or concealed**, [on or about his person; under his control in any vehicle of any description], **any** [firearm; assault weapon; weapon that can be converted into an automatic weapon along with a conversion kit], **loaded or unloaded, within** [1000; one thousand] **feet of** [the real property comprising a public or private elementary, junior, secondary or vocational school or a public or private college, junior college, or university; a playground; a housing facility owned by a public housing authority; a public youth center; a private youth center; a school bus stop; a private youth center swimming pool; a public swimming pool; a public beach]; **and**
- (2) **Defendant was not authorized by law to do so; and**
- (3) **This conduct took place on or about <date> in** [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 2253(f)

### ***Practice Note***

The text of 14 V.I.C. § 2253(f) is as follows:

#### **§ 2253.**

(f) Whoever, unless authorized by law, has, possesses, bears, transports or carries, either openly or concealed, on or about his person, or under his control in any vehicle, of any description, any firearm as defined in title 23, section 451(f) of this code and any assault weapon as defined in subsection (d), or any weapon that can be converted along with a conversion kit, loaded or unloaded

within one thousand feet of the real property comprising a public or private elementary, junior, secondary or vocational school or a public or private college, junior college, or university or a playground or a housing facility owned by a public housing authority or within one thousand feet of a public or private youth center, [a] school bus stop or [a] private youth center or public swimming pool or [a] public beach, is subject to twice the maximum punishment prescribed in subsections (a) and (b) of this section and section 2256(a) and (b) of this chapter.

### **18.21 Possession, Sale, Purchase, Advertising, Manufacturing, or Use of Ammunition by Unauthorized Person**

**The defendant is charged with the crime of [possession; sale; purchase; advertising for sale; manufacturing; use] of ammunition by an unauthorized person. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant [possessed; sold; purchased; manufactured; advertised for sale; used] any firearm ammunition; and**
- (2) Defendant was not at that time [a licensed firearms or ammunition dealer; an officer, agent or employee of the Virgin Islands or the United States, on duty and acting within the scope of (his; her) duties; the holder of a valid firearms license for the same firearm gauge or caliber ammunition of the firearm indicated on such license]; and**
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

**14 V.I. Code § 2256(a)**

## ***Practice Note***

The text of 14 V.I.C. § 2256(a) is as follows:

### **§ 2256. Possession or sale of ammunition**

(a) Any person who is not:

(1) a licensed firearms or ammunition dealer; or

(2) officer, agent or employee of the Virgin Islands or the United States, on duty and acting within the scope of his duties; or

(3) holder of a valid firearms license for the same firearm gauge or caliber ammunition of the firearm indicated on such license; and

(4) who possesses, sells, purchases, manufactures, advertises for sale, or uses any firearm ammunition

is guilty subject to imprisonment for up to seven years or a fine not more than \$10,000 to both fine and imprisoned.

(b) Any person who, unless authorized by law possesses, sells, purchases, manufactures, advertises for sale, or uses armor piercing or exploding ammunition for use in a firearm shall be guilty of a felony and shall be fined not less than \$15,000 and imprisoned not less than fifteen years.

(c) As used in this section—

(1) “Firearm” means any firearm as defined in title 23, section 451(f) of this Code.

(2) “Firearm ammunition” means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable for use in a firearm.

(3) For purposes of this section, the following are excluded from the definitions contained herein:

(A) Any device or ammunition exclusively designed for use with a device used exclusively for signaling or safety and required or recommended by the United States Coast Guard; and

(B) Any device or ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.

(d) For purposes of this section “armor-piercing” shall mean that with a penetration resistance equal to or greater than that of 18 layers of aramid, and “exploding” shall mean that which is designed to enter an object and explode without regard to whether it strikes another object.

(e) The provisions of this section regarding the acquisition and possession of firearm ammunition and armor-piercing or exploding ammunition do not apply to law enforcement officials for use in their employment or in the exercise of their duties as defined by law.

(f) An information based upon a violation of this section need not negate any exemption herein contained. The defendant shall have the burden of proving such an exemption.

**Inapplicability to Law Enforcement.** Subsection (e) of § 2256 makes it clear that the statute’s provisions regarding acquisition or possession of firearm ammunition and armor-piercing or exploding ammunition do not apply to law enforcement officials for use in their employment or in the exercise of their duties as defined by law.

**Defendant’s Burden on Exemptions.** Subsection (f) of 14 V.I.C. § 2256 expressly provides that an information based upon a violation of this section *need not* negate any exemption. Rather: “The defendant shall have the burden of proving such an exemption.” However, in one case in the modern era, because the People failed to present any evidence that defendant was not authorized to possess ammunition in contravention of Virgin Islands law, his conviction on that charge was reversed. *Stevens v. People*, 52 V.I. 294 (V.I. 2009).

**Shooting as Use.** The Superior Court has found that evidence that defendant shot a victim demonstrated use of ammunition under this section, and the jury could reasonably infer that shooting someone who was unarmed and taking cover during an active shooter situation was not within the scope of the duties of an officer, employee, or agent of the United States Government or of the Government of the Virgin Islands. **People v. Roberts**, 2019 VI SUPER 20 (V.I. Super. Ct. 2019).

**Prior Statute.** Because the statute as it existed at the time of defendant's offense generally criminalized possession of ammunition “unless authorized by law” but provided no means to obtain such authorization, the People could not have proven that defendant committed the offense of unauthorized possession of ammunition. *Petric v. People*, 61 V.I. 401 (V.I. 2014). See *Brown v. People*, 55 V.I. 496 (V.I. 2011); see also *Williams v. People*, 56 V.I. 821 (V.I. 2012); *Blyden v. People*, 53 V.I. 637 (V.I. 2010); *Mulley v. People*, 51 V.I. 404 (V.I. 2009).

### **18.23 Definitions for Possession, Sale, Purchase, Advertising, Manufacturing, or Use of Ammunition by Unauthorized Person**

In a charge of possession or sale of ammunition by an unauthorized person

- (1) “Firearm” means any firearm as defined in title 23, section 451(f) of this Code.
- (2) “Firearm ammunition” means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable for use in a firearm.

- (3) For purposes of this section, the following are excluded from the definitions contained herein:
- (A) Any device or ammunition exclusively designed for use with a device used exclusively for signaling or safety and required or recommended by the United States Coast Guard; and
  - (B) Any device or ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.
- (4) For purposes of this section “armor-piercing” shall mean that with a penetration resistance equal to or greater than that of 18 layers of aramid, and “exploding” shall mean that which is designed to enter an object and explode without regard to whether it strikes another object.

### Sources & Authority

14 V.I. Code § 2256(c)

### ***Practice Note***

The text of 14 V.I.C. § 2256(c) and (d) are set forth verbatim in this definitional Instruction.

## **18.25 Possession, Sale, Purchase, Advertising, Manufacturing, or Use of Armor Piercing or Exploding Ammunition**

The defendant is charged with the crime of [possession; sale; purchase; advertising; manufacturing; use] of armor-piercing or exploding ammunition by an unauthorized person. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [possessed; sold; purchased; manufactured; advertised for sale; used] any [armor piercing; exploding] firearm ammunition; and
- (2) Defendant was not at that time [a licensed firearms or ammunition dealer; an officer, agent or employee of the Virgin Islands or the United States, on duty and acting within the scope of his duties; the holder of a valid firearms license for the same firearm gauge or caliber ammunition of the firearm indicated on such license]; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 2256(b)

### ***Practice Note***

The text of 14 V.I.C. § 2256(b) is as follows:

**§ 2256. Possession or sale of ammunition**

(b) Any person who, unless authorized by law possesses, sells, purchases, manufactures, advertises for sale, or uses armor piercing or exploding ammunition for use in a firearm shall be guilty of a felony and shall be fined not less than \$15,000 and imprisoned not less than fifteen years.

### **18.27 Purchase, Ownership, or Possession of Body Armor by Convicted Felon**

The defendant is charged with the crime of [purchasing; owning; possessing] body armor having previously been convicted of a violent felony. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [purchased; owned; possessed] body armor; and
- (2) Defendant had previously been convicted of a crime of violence, as defined in this section, under the laws of the United States, the Virgin Islands or any other state, territory, government or county; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 2258



## ***Practice Note***

The text of 14 V.I.C. § 2258 is as follows:

### **§ 2258. Proscription on possession of body armor by persons convicted of a violent felony**

(a) As used in this section:

(1) “Body armor” means any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor.

(2) “Crime of violence” means:

(A) a felony offense that has as an “element the use, attempted use, or threatened use of physical force against the person or property of another”, or

(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(3) “Employer” means any individual other than a person accused of violating this section who is employed by the accused’s business and oversees the accused’s activity. If the person accused has no supervisor, any other employee of the business may provide certification as an employer.

(b) It shall be unlawful for any person who has been convicted of a crime of violence, as defined in this section, under the laws of the United States, the Virgin Islands or any other state, territory, government or county, to purchase, own, or possess body armor.

(c) Any person who has been convicted of a crime of violence, as defined in this section, under the laws of the United States, the Virgin Islands or any other state, territory, government or county who purchases, owns, or possesses body armor is guilty of a felony punishable by imprisonment for not more than 3 years.

## **18.29 Definitions for Body Armor Offenses**

**In a prosecution for the crime of possession of body armor having previously been convicted of a violent felony,**

**(1) “Body armor” means any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor.**

**(2) “Crime of violence” means:**

- (A) a felony offense that has as an “element the use, attempted use, or threatened use of physical force against the person or property of another”, or
  - (B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.
- (3) “Employer” means any individual other than a person accused of violating this section who is employed by the accused’s business and oversees the accused’s activity. If the person accused has no supervisor, any other employee of the business may provide certification as an employer.

### Sources & Authority

14 V.I. Code § 2258(a)

### ***Practice Note***

The text of 14 V.I.C. § 2258(a) is set forth verbatim in the above definitions.

## **18.31 Wearing Body Armor While Committing or Attempting to Commit a Violent Crime**

The defendant is charged with the crime of wearing body armor while [committing; attempting to commit] a violent crime. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant wore body armor during the course of [committing; attempting to commit] a crime of violence; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 2258a

## ***Practice Note***

The text of 14 V.I.C. § 2258a is as follows:

**§ 2258a. Wearing body armour in the commission of a violent crime**

(a) Any person who wears body armour during the course of committing or attempting to commit a crime of violence, as defined in section 2258(a)(2), upon conviction shall be imprisoned for not more than five years and fined not more than \$5,000 or shall be both imprisoned and fined.

**Added Penalties.** Under § 2258a(b), (b) the “penalties prescribed in subsection (a) are in addition to those prescribed for the commission of, or the attempt to commit a crime of violence, and the sentence under this section must be served consecutively to any other sentence imposed.”

## Chapter 19. DISORDERLY CONDUCT 14 V.I.C. § 621 - 625

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### **19.01 Brandishing, Exhibiting or Using Deadly Weapons**

The defendant is charged with the crime of [brandishing; exhibiting; using] a deadly weapon. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That in the presence of two or more persons the defendant

*\* Select element(s) charged in this case \**

... [drew; exhibited] a deadly weapon in a rude, angry, and threatening manner;

... used a deadly weapon in a [fight; quarrel];

**and**

(2) Defendant was not acting as necessary in self-defense; and

(3) That this conduct took place on or about (*date*) in [this judicial division; <*name of judicial division*>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 621

### **Practice Note**

The statute governing these crimes, 14 V.I.C. § 621, provides as follows:

#### **§ 621. Brandishing, exhibiting, or using deadly weapons**

Whoever—

(1) not in necessary self-defense, and in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner; or

(2) in any manner unlawfully uses the same in any fight or quarrel—

shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

[NOTE OF MODEL JURY INSTRUCTIONS COMMITTEE: *the above instruction is drafted as though the self-defense exception applies under both possible theories, mere angry exhibition of the weapon, and use of a weapon in a fight.*]

### **19.03 Disturbing or Breaking Up a Meeting**

The defendant is charged with the crime of [disturbing; breaking up] a meeting. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [disturbed; disquieted] an assemblage of people met for [religious worship; <name any other purpose not unlawful in character>] by [ profane discourse; rude or indecent behavior; any unnecessary noise], [within the place where the meeting was held; so near to the place where the meeting was held as to disturb the order and solemnity of the meeting];

... without authority of law, [disturbed; broke up] any [assembly; meeting] not unlawful in its character;

and

**(2) Defendant acted willfully, meaning on purpose or willingly; and**

**(3) That this conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

**14 V.I. Code § 624**

### **Practice Note**

The statute governing these crimes, 14 V.I.C. § 624, provides:

## § 624. Disturbing or breaking-up meetings

Whoever—

(1) willfully disturbs or disquiets any assemblage of people met for religious worship or any other purpose not unlawful in character, by noise, profane discourse, rude or indecent behaviour or any unnecessary noise, either within the place where the meeting is held, or so near as to disturb the order and solemnity of the meeting; or

(2) without authority of law, willfully disturbs or breaks up any assembly or meeting not unlawful in its character—

shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

**Willful Action.** Under 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “*willful*” or “*willfully*” means that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. Since there is no specialized definition of these terms in the V.I. Code chapter to which the present Instruction relates – or in the statute prescribing the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

**No Jury Trial for General “Disturbing the Peace.”** The general “disturbing the peach” provision is found in 14 V.I.C. § 622:

## § 622. Disturbing the peace; fighting

Whoever maliciously and willfully—

(1) disturbs the peace or quiet of any village, town, neighborhood or person, by loud or unusual noise, or by tumultuous offensive conduct, or threatening, traducing, quarreling, challenging to fight or fighting; or

(2) on the public streets, or upon the public highways, or within hearing of such streets or highways, uses any vulgar, profane, or indecent language in a loud and boisterous manner—

shall be fined not more than \$100 or imprisoned not more than 90 days, or both.

In *Murrell v. People*, 54 V.I. 327, 333-34 (V.I. 2010), the Supreme Court held that there is no right to a jury trial on disturbing the peace charges since it is a petty offense under established Sixth Amendment doctrine. Thus it similarly appears that prosecutions under § 623 for “instigating or aiding a fight,” which also prescribes a maximum punishment of \$100 or 90 days in jail, also would not merit a jury trial. Hence no Model Jury Instruction is set forth for those offenses.

## Chapter 20. DRIVING UNDER THE INFLUENCE OF ALCOHOL/DRUGS 20 V.I.C. §493

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### **20.01 Driving Under Influence of Intoxicating Liquors or Controlled Substances**

The defendant is charged with the crime of driving a motor vehicle while under the influence of alcohol or controlled substances. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant was under the influence of [an intoxicating liquor; a controlled substance; both an intoxicating liquor and a controlled substance]; and
- (2) Defendant [drove; operated; was in actual physical control of], any motor vehicle.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

20 V.I. Code § 493; 20 V.I. Code § 101

Ubiles v. People, 66 V.I. 572 (2017); Rawlins v. People, 61 V.I. 261 (V.I. 2014)

#### ***Practice Note***

The text of 20 V.I.C. § 493(a) provides as follows.

**§ 493. Driving while under the influence of intoxicating liquors or controlled substances; violations; penalties \* \* \* \***

(1) It is unlawful for any person who is under the influence of an intoxicating liquor or a controlled substance included in Schedule I, II, III, IV, or V of section 595, chapter 29, Title 19,

Virgin Islands Code, or under the combined influence of an intoxicating liquor and such a controlled substance, to drive, operate, or be in actual physical control of, any motor vehicle within the Territory.

(2) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive, operate, or be in actual physical control of, any motor vehicle within the Territory.

**Case law.** In *Ubiles*, the Supreme Court said:

The language “under the influence of an intoxicating liquor or a controlled substance included in Schedule I, II, III, IV, or V of Section 595 ... or under the combined influence of an intoxicating liquor and such a controlled substance” provides three alternative modes of being “under the influence.” First, a person can be under the influence of those “controlled substances” identified in section 595 of title 19 of the Virgin Islands Code. Second, a person could be under the influence of an “intoxicating liquor” and a “controlled substance,” as indicated by the use of the phrase “or both” when listing the three modes of being “under the influence.” Third, a person may be under the influence of an “intoxicating liquor.”

66 V.I. at 592.

**Liquor.** In *Ubiles* the Supreme Court refused to differentiate between alcoholic beverages that are “fermented” and those that are “distilled,” finding any such distinction “entirely illogical because intoxication is equally dangerous in either form.” *Id.* at 593

**Definition of “Under the Influence.”** In *Rawlins*, 58 V.I. at 272-73, the V.I. Supreme Court adopted as a definition for “under the influence” the standard that the defendant was “*driving in a state of intoxication that lessens a person's normal ability for clarity and control.*” This standard was there described as a common understanding of many jurisdictions, consistent with the obvious purpose of drunk driving statutes; i.e., to prevent people from driving unsafely due to an alcohol-induced diminished capacity. If desired, this italicized definition (adopted from other jurisdictions in *Rawlins* and reaffirmed in *Ubiles*) can be given as a supplemental instruction.

**Motor Vehicles.** In *Ubiles* the Court noted that a “‘motor vehicle’ includes all vehicles propelled by power other than muscular, except those running upon rails or tracks, road rollers, tractors, and self-propelled plows and golf carts used solely for recreational purposes on golf courses and not on public roads or highways,” 20 V.I.C. § 101; 66 V.I. at 594. Section 101 excludes from this definition the following: (1) vehicles running upon rails or tracks, (2) road rollers, (3) tractors, (4) self-propelled plows, and (5) golf carts not in use on public roads or highways. As summarized by the Court, “[t]he language and structure of § 101 explicitly



indicate that there is one definition of a ‘motor vehicle,’ which is any vehicle propelled by power other than muscular.” *Id.* at 594.

**Driving and Exercising Physical Control of the Vehicle.** Parsing the language of § 493, the Supreme Court has stated that the element that the defendant “drove, operated or was in actual physical control” of a motor vehicle is applied by the commonly understood meaning of the words, since there are no specialized definitions of these terms in the statutes. *Id.* at 595. It concluded that – to be in actual physical control of the vehicle – the defendant must have had “the present physical power to control the function of the motor vehicle. This would require 1) that the person have the present ability to readily move the vehicle by use of its power source and 2) actions by that person that demonstrate the intent to engage the power source needed to move the vehicle (e.g., by placing the key in the ignition).” *Id.* The Court said:

If the Legislature had intended to require the defendant’s asportation of the vehicle, the expansive, catchall language of “actual physical control” would not have been used. To “drive” has a commonly understood meaning, as does the word “operate.” When it is stated that someone was driving a vehicle, this statement conjures a very specific image of conduct that is the same as when one says that a person was operating a motor vehicle. However, being informed that someone was in actual physical control of a vehicle casts a broader net and encompasses conduct that would not be described as driving or operating a vehicle.

The use of the modifiers “actual” and “physical” when describing “control of the motor vehicle” also indicates that the Legislature rejected any attempt to criminalize innocent conduct. Again, to assert that a person was in control of a vehicle is expansive and could readily be understood to include ownership of the vehicle, leasing a vehicle, storing a vehicle in a storage unit for another person, and a whole plethora of other actions that indicate some form of authority over the vehicle. However, when modifying “control” with the words “actual” and “physical,” a very clear image of a person present, in the vehicle, taking some perceptible physical action to “control” the vehicle arises.

*Id.* On the facts of that case, the defendant “occupied the driver’s seat of the vehicle and inserted the key into the ignition of the vehicle in the officer’s presence” – actions that were held to be proof beyond a reasonable doubt that he was in actual physical control of the vehicle.

### **20.03 Driving With a Prohibited Blood Alcohol Content**

The defendant is charged with the crime of driving a motor vehicle with a prohibited blood alcohol content. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant had blood alcohol content level of 0.08 % or more by weight; and

(2) Defendant [drove; operated; was in actual physical control of], any motor vehicle.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

20 V.I. Code § 493

Ubiles v. People, 66 V.I. 572 (2017); Rawlins v. People, 61 V.I. 261 (V.I. 2014)

#### ***Practice Note***

The text of 20 V.I.C. § 493 is set forth in the *Practice Note* to the preceding Instruction. *See also* the discussion there of the driving or operating standard.

## Chapter 21. DRUG OFFENSES 19 V.I.C. § 591 – 631

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### **21.01 Definitions**

Under the controlled substances laws,

(1) The term “addict” means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term “administer” refers to the direct application of a controlled substance to the body of a patient or research subject by—

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of the practitioner, whether such application be by injection, inhalation, ingestion, or any other means.

**(3) The term “agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier's warehouseman's business.**

**(4) The term “bath salts” means a synthetic cathinone, either 3, 4-methyl enedioxypyrovalerone (MDPV) or mephedrone.**

**(5) The term “Commissioner” means the Commissioner of Health.**

**(6) The term “control” means to add a drug or other substance, or immediate precursor, to a schedule under section 595 of this chapter, whether by transfer from another schedule or otherwise.**

**(7) The term “controlled substance” means a drug or other substance, or immediate precursor, included in Schedule I, II, III, IV, or V of section 595 of this chapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used elsewhere in this code. The term does not include industrial hemp as defined in 7 V.I.C. § 200(e).**

**(8) The term “counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade-name, or other identifying mark, imprint, number, or device or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.**

**(9) The terms “deliver” or “delivery” mean the actual, constructive, or attempted transfer of a controlled substance, whether or not there exists an agency relationship.**

**(10) The term “depressant or stimulant substance” means—**

**(A) a drug which contains any quantity of (i) barbituric acid or any of the salts of barbituric acid; or (ii) any derivative of barbituric acid which has been designated by the Secretary as habit forming under section 502(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(d)); or**

**(B) a drug which contains any quantity of (i) amphetamine or any of its optical isomers; (ii) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (iii) any substance which the Commissioner, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or**

**(C) Lysergic acid diethylamide; or**

**(D) any drug which contains any quantity of a substance which the Commissioner, after investigation, has found to have, and by regulation**

designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(11) The term “designer drug” means a substance other than a controlled substance that is intended for human consumption and that either has a chemical structure substantially similar to that of a controlled substance in schedules I, II or III found in title 19, section 595, Virgin Islands Code or that produces an effect substantially similar to that of a controlled substance in schedules I, II or III. Examples of chemical classes in which designer drugs are found include, but are not limited to, the following: Phenethylamines, N-substituted piperidines, morphinans, ecgonines, quinazolinones, substituted indoles and arylcycloalkylamines.

(12) The term “dispense” means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance of such delivery. The term “dispenser” means a practitioner who so delivers a controlled substance to an ultimate user or research subject.

(13) The term “distribute” means to deliver (other than by administering or dispensing) a controlled substance. The term “distributor” means a person who so delivers a controlled substance.

(14) The term “drug” has the meaning given that term by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act.

(15) The term “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. The term includes, but is not limited to:

(A) Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

(B) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(C) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.

**(D) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.**

**(E) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.**

**(F) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.**

**(G) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining cannabis.**

**(H) Containers intended for use, or designed for use in compounding controlled substances.**

**(I) Capsules, balloons, envelopes, and other containers used, intended for use or designed for use in packaging small quantities of controlled substances.**

**(J) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.**

**(K) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.**

**(L) Objects including, but not limited to rolling papers, used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body, such as:**

**(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.**

**(ii) Water pipes.**

**(iii) Carburetion tubes and devices.**

**(iv) Smoking and carburetion masks.**

**(v) Roach clips, meaning objects used to hold burning material such as a cannabis cigarette that has become too small or short to be held in the hand.**

**(vi) Miniature cocaine spoons and cocaine vials.**

**(vii) Chamber pipes.**

**(viii) Carburetor pipes.**

**(ix) Electric pipes.**

**(x) Air-driven pipes.**

- (xi) Chillums.**
- (xii) Bongs.**
- (xiii) Ice pipes or chillers.**

**(M) In determining whether an object is drug paraphernalia, a Court or other authority or jury shall consider, in addition to all other logically relevant factors, the following:**

**(i) Statements by an owner or by anyone in control of the object concerning its use.**

**(ii) The proximity of the object, in time and space, to a direct violation of the provisions of this chapter.**

**(iii) The proximity of the object to controlled substances.**

**(iv) The existence of any residue of controlled substances on the object.**

**(v) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.**

**(vi) Instructions, oral or written, provided with the object concerning its use.**

**(vii) Descriptive materials accompanying the object which explain or depict its use.**

**(viii) Any advertising concerning its use.**

**(ix) The manner in which the object is displayed for sale.**

**(x) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.**

**(xi) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.**

**(xii) The existence and scope of legitimate uses for the object in the community.**

**(xiii) Expert testimony concerning its use.**

**(16) The term “felony” means any Federal, State or Virgin Islands offense classified by applicable Federal, State or Virgin Islands law as a felony.**

**(17) The term “imitation controlled substance” means**

**(A) a product specifically designed or manufactured to resemble the physical appearance of a controlled substance, such that a reasonable person of ordinary knowledge would not be able to distinguish the imitation from the controlled substance by its outward appearance, or**

**(B) a product, not a controlled substance, which, by representations made and by dosage unit appearance, including color, shape, size, or markings, would lead a reasonable person to believe that, if ingested, the product would have a stimulant or depressant effect similar to or the same as that of one or more of the controlled substances included in Schedules I through V, inclusive of section 595 of this chapter.**

**(18) The term “manufacture” means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term “manufacturer” means a person who manufactures a drug or other substance.**

**(19) The term “marijuana” means all parts of any species of the plant cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.**

**(20) The term “narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:**

**(A) Opium, coca leaves, and opiates.**

**(B) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates.**

**(C) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in clause (A) or (B). Such term does not include decocainized coca**



leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

(21) The term “opiate” means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable or conversion into a drug having such addiction-forming or addiction-sustaining liability.

(22) The term “opium poppy” means the plant of the species *papaver somniferum* L., except the seed thereof.

(23) The term “poppy straw” means all parts, except the seeds of the opium poppy, after mowing.

(24) The term “practitioner” means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the Government of the Virgin Islands, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(25) The term “production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(26) The term “immediate precursor” means a substance—

(A) which the Commissioner has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

(27) The term “Secretary”, unless the context otherwise indicates, means the Secretary of Health and Human Services of the United States.

(28) The term “State” means the Virgin Islands, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Canal Zone.

(29) The terms “synthetic cannabinoid agonists”, “piperazines”, or “synthetic marijuana” mean any chemical compound that contains Benzylpiperazine, Trifluoromethylphenylpiperazine, 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol, 1-Butyl-3-(1-naphthoyl)indole, 1-Pentyl-3-(1-naphthoyl)indole, dexanabinol, (1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone (JWH-200), 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250), or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term does not include synthetic cannabinoids that require a prescription, are approved by the United States

Food and Drug Administration, and are dispensed in accordance with Virgin Islands and federal law.

(30) The term “ultimate user” means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

(31) The term “United States”, when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States.

## Sources & Authority

### 19 V.I. Code § 593

### ***Practice Note***

The text of 19 V.I.C. § 593 is set forth verbatim in the definitional Instruction above.

Subchapter I of Chapter 29 in Title 19 the Virgin Islands Code is denominated the Virgin Islands Controlled Substances Act, and it contains background “Findings” in § 592.

**Forfeiture Provisions.** In § 623 of Title 19 of the Virgin Islands Code are detailed provisions regarding the forfeiture of property, including vehicles, used in connection with offenses under the controlled substances statutes.

**Immunity and Privilege Statute.** A specific section of controlled substances statutes addresses the assertion of claims of self-incrimination and associated issues of immunity arising from compelled testimony. See 19 V.I.C. § 626.

**Exemptions Generally.** A broadly-worded statute, 19 V.I.C. § 627, provides that it is “not be necessary for the Government of the Virgin Islands to negative any exemption or exception set forth in this chapter in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter, and the burden of going forward with the evidence with respect to any such exemption or exception shall be upon the person claiming its benefit.” Similarly, under subsection (b) of that statute – in the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under the laws – “he shall be presumed not to be the holder of such registration or form, and the burden of going forward with the evidence with respect to such registration or form shall be upon him.”

**Civil Liability of Drug Dealers.** In the Drug Dealer Liability Act, 19 V.I.C. §§ 641 to 658, there are extensive provisions for a private right of action on behalf of persons injured or damaged as a result of illegal drug activity.

### **21.03 Schedule I or II Narcotic Offenses**

The defendant is charged with the crime of a Schedule I or II narcotics offense. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

- ... [manufactured; distributed; dispensed] a controlled narcotic substance;
- ... possessed with intent to [manufacture; distribute; dispense] a controlled narcotic substance;
- ... [created; distributed; dispensed] a counterfeit substance;
- ... possessed with intent to [distribute; dispense] a counterfeit substance;

**and**

**(2) Defendant was not authorized to do so; and**

**(3) Defendant acted intentionally or knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and**

**(4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

**19 V.I. Code § 604(a)**

*McIntosh v. People*, 57 V.I. 669 (V.I. 2012).

#### ***Practice Note***

The text of 19 V.I.C. § 604(a) is as follows:

**§ 604. Prohibited acts A-penalties**

(a) Except as authorized by this chapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in section 608, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)

(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than \$25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this chapter or other law of the Virgin Islands relating to narcotic drugs, marijuana, synthetic marijuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than \$50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

**Knowing Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (3) of the above Instruction.

**Possession With Intent to Distribute.** There was sufficient evidence of possession of cocaine with intent to distribute rather than for personal consumption when a task force agent found 28 clear plastic bags containing a rock-like white substance and 4 clear plastic bags containing a white, powdery substance, at least some of which tested positive for cocaine, and agents testified that defendant told them that he had previously found and sold cocaine for \$5 and \$10 when he had no money. *Gumbs v. People*, 64 V.I. 491 (V.I. 2016). Similarly sufficient evidence to support conviction for possession with intent to distribute existed where defendant brought 213 grams of marijuana into the prison where he worked and brought no paraphernalia to consume it himself. *McIntosh v. People*, 57 V.I. 669 (V.I. 2012).

**Simple Possession as Lesser Included Offense.** In a prosecution for possession of marijuana with intent to distribute, the trial court’s “failure” to sua sponte instruct on the lesser included offense of simple possession was not plain error. Based on the evidence, the jury did not have a reasonable ground on which to convict the defendant of simple possession, but acquit him on possession with intent to distribute. *McIntosh v. People*, 57 V.I. 669 (V.I. 2012).

## **21.05 Schedule I or II Offense – Not Narcotic**

The defendant is charged with the crime of a Schedule I or II offense with a non-narcotic substance. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [manufactured; distributed; dispensed] a controlled substance;

... possessed with intent to [manufacture; distribute; dispense] a controlled substance;

... [created; distributed; dispensed] a counterfeit substance;

... possessed with intent to [distribute; dispense] a counterfeit substance;

**and**

**(2) Defendant was not authorized to do so, and acted intentionally or knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

19 V.I. Code § 604(a)

### ***Practice Note***

The text of 19 V.I.C. § 604(a) is as follows:

**§ 604. Prohibited acts A-penalties**

(a) Except as authorized by this chapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in section 608, any person who violates subsection (a) of this section shall be sentenced as follows:

(1) \* \* \* \*

(B) In the case of a controlled substance in schedule I or II which is not a narcotic drug or in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than \$15,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this chapter or other law of the Virgin Islands relating to narcotic drugs, marijuana, synthetic marijuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than \$30,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

**Knowing Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

## **21.07 Schedule IV Controlled Substance Offense**

The defendant is charged with the crime involving a Schedule IV controlled substance. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

- ... [manufactured; distributed; dispensed] a controlled substance;
  - ... possessed with intent to [manufacture; distribute; dispense] a controlled substance;
  - ... [created; distributed; dispensed] a counterfeit substance;
  - ... possessed with intent to [distribute; dispense] a counterfeit substance;
- and**

**(2) Defendant was not authorized to do so, and acted intentionally or knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

19 V.I. Code § 604(b)(2)

### ***Practice Note***

The text of 19 V.I.C. § 604(b)(2) is as follows:

**§ 604(b).**

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than \$10,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this chapter or other law of the Virgin Islands relating to narcotic drugs, marijuana,

synthetic marijuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than \$20,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

**Knowing Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

## **21.09 Schedule V Controlled Substance Offense**

The defendant is charged with the crime involving a Schedule V controlled substance. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [manufactured; distributed; dispensed] a controlled substance;

... possessed with intent to [manufacture; distribute; dispense] a controlled substance;

... [created; distributed; dispensed] a counterfeit substance;

... possessed with intent to [distribute; dispense] a counterfeit substance;

**and**

**(2) Defendant was not authorized to do so, and acted intentionally or knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**



**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**19 V.I. Code § 604(b)(3)**

### ***Practice Note***

The text of 19 V.I.C. § 604(b)(3) is as follows:

#### **§ 604(b).**

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$5,000, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this chapter or other law of the Virgin Islands relating to narcotic drugs, marijuana, synthetic marijuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than \$10,000, or both.

**Knowing Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

## **21.11 Designer Drug Offense**

The defendant is charged with the crime of designing, delivering or bringing into this Territory a designer drug or a mixture containing any such substance. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [manufactured; distributed; dispensed] a designer drug or a mixture containing any such substance;

... possessed with intent to [manufacture; distribute; dispense] a designer drug or a mixture containing any such substance;

... [created; distributed; dispensed] a counterfeit substance;

... possessed with intent to [distribute; dispense] a counterfeit substance;

**and**

**(2) Defendant was not authorized to do so, and acted intentionally or knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

19 V.I. Code § 604(b)(6)

### ***Practice Note***

The text of 19 V.I.C. § 604(b)(6) is as follows:

**§ 604(b). Prohibited acts A-penalties**

\* \* \* \*

(6) In the case of designer drugs any person who, on any single occasion, knowingly sells, manufactures, delivers or brings into this territory with intent to deliver a designer drug, or any mixture containing any such substance, as described in § 593(11) of this

title, is guilty of a class B felony, which felony shall be known as “trafficking in designer drugs”. The person shall be sentenced to mandatory minimum term of imprisonment of five (5) years and to pay a fine of not less than ten thousand dollars (\$10,000).

**Knowing Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

### **21.13 Distribution or Dispensing Offenses by Registrants -19 V.I. Code § 605**

The defendant is charged with the crime of violating the law as an authorized dispenser or distributor of controlled substances. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant was a registrant, subject to legal requirements for distributing or dispensing a controlled substance; and

(2) The defendant

*\* Select element(s) charged in this case \**

... [distributed; dispensed] a controlled substance not authorized by (his; her) registration to another registrant or other authorized person;

... manufactured a controlled substance not authorized by (his; her) registration;

... distributed a controlled substance without the labelling required by law;

... [removed; altered; obliterated] a [symbol; label] required by law to be retained;

... [refused; failed] to [make; keep; furnish] any [required record; report; notification; declaration; order; order form; statement; invoice; information];

... refused any [entry into any premises; inspection] authorized by law;

- ... removed; broke; injured; defaced] a seal placed upon controlled substances pursuant to law;
- ... [removed; disposed of] controlled substances placed under seal pursuant to law;
- ... [used to (his; her) own advantage; revealed other than to duly authorized officers or employees of the Government of the Virgin Islands or to the courts when relevant in any judicial proceeding], any information acquired in the course of an inspection authorized by law concerning any method or process which as a trade secret is entitled to protection;
- ... manufactured a controlled substance in schedule I or II which is not expressly authorized by (his; her) registration;

**and**

- (2) Defendant acted knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and**
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**19 V.I. Code § 605**

### ***Practice Note***

The text of 19 V.I.C. § 605 is as follows:

#### **§ 605. Prohibited acts B-penalties**

- (a) It shall be unlawful for any person—
  - (1) who is subject to the requirements to distribute or dispense a controlled substance in violation of section 603;
  - (2) who is a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration;
  - (3) who is a registrant to distribute a controlled substance in violation of section 600 of this chapter;

(4) to remove, alter, or obliterate a symbol or label required by section 600 of this chapter;

(5) to refuse or fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this chapter;

(6) to refuse any entry into any premises or inspection authorized by this chapter;

(7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to law or to remove or dispose of substances so placed under seal; or

(8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the Government of the Virgin Islands, or to the courts when relevant in any judicial proceeding under this chapter, any information acquired in the course of an inspection authorized by this chapter concerning any method or process which as a trade secret is entitled to protection.

(b) It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II which is not expressly authorized by his registration.

(c)

(1) Except as provided in paragraph (2), any person who violates this section shall, with respect to any such violation, be subject to a civil penalty of not more than \$25,000.

(2)

(A) If a violation of this section is prosecuted by an information which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) of this paragraph, be sentenced to imprisonment of not more than one year or a fine of not more than \$25,000, or both.

(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under this paragraph (2), or for a crime under any other provision of this chapter or other law of the Virgin Islands relating to narcotic drugs, marijuana, synthetic marijuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of \$50,000, or both.

(3) Except under the conditions specified in paragraph (2) of this section, a violation of this section does not constitute a crime, and a judgment for the Government of the Virgin Islands and imposition of a civil penalty pursuant to paragraph (1) shall not

give rise to any disability or legal disadvantage based on conviction of a criminal offense.

**Knowing Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

### **21.15 Distribution or Dispensing Offenses by Registrants - 19 V.I. Code § 606**

**The defendant is charged with the crime of violating the law as an authorized dispenser or distributor of controlled substances. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant was a registrant subject to legal requirements for distributing or dispensing a controlled substance; and**
- (2) The defendant**

*\* Select element(s) charged in this case \**

... distributed a controlled substance classified in schedule I or II, in the course of his legitimate business, without a required order or order form;

... used in the course of the [manufacture; distribution] of a controlled substance a registration number which is [fictitious; revoked; suspended; issued to another person];

... [acquired; obtained possession of] a controlled substance by [misrepresentation; fraud; forgery; deception; subterfuge];

... furnished false material information in; furnished fraudulent material information in; omitted any material information from], any required [application; report; record; <name of other document required to be made, kept, or filed>];

... [made; distributed; possessed] any [punch; die; plate; stone; <name of other thing>] designed to [print; imprint; reproduce] the [trademark; trade name; <name of other identifying mark, imprint, or device>] of another or

any likeness of a [trademark; trade name; <name of other identifying mark, imprint, or device>] of another, upon any [drug; container of a drug; labeling of a drug] so as to render such drug a counterfeit substance; ... in [committing; causing; facilitating the commission of] any [act; acts] constituting a felony under the controlled substances laws, used any communication facility, which means any public or private instrumentality for the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication; **and**

**(3) Defendant acted intentionally or knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and**

**(4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**19 V.I. Code § 606**

### ***Practice Note***

The text of 19 V.I.C. § 606 is as follows:

#### **§ 606. Prohibited acts C-penalties**

(a) It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 602 of this chapter;

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report,

record, or other document required to be made, kept, or filed under this chapter; or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance.

(b) It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this chapter. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term “communication facility” means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

(c) Any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than \$30,000, or both; except that if any person commits such a violation after one or more of his prior convictions for violation of this section, or for a felony under any other provision of this chapter or other law of the Virgin Islands relating to narcotic drugs, marijuana, synthetic marijuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than \$60,000, or both.

**Knowing Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (3) of the above Instruction.



## **21.17 Possession of Non-Prescribed Substances (Other than marijuana)**

The defendant is charged with the crime of possessing a non-prescribed controlled substance other than marijuana. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant possessed [a controlled substance; a designer drug] that was not obtained [directly; pursuant to a valid prescription or order] from a practitioner acting in the course of (his; her) professional practice;
- (2) Defendant's possession of such substance was not otherwise authorized by law; and
- (3) Defendant acted intentionally or knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and
- (4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

19 V.I. Code § 607

### ***Practice Note***

The text of 19 V.I.C. § 607 is as follows:

**§ 607. Penalty for simple possession; conditional discharge and expunging of records for first offense**

(a) Except as provided in sections 607a, it shall be unlawful for any person knowingly or intentionally to possess a controlled substance or designer drugs unless such substance or designer drugs was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$5,000, or both, except that if he commits such offense after a prior conviction or convictions under this

subsection, have become final, he shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than \$10,000, or both.

**Practitioner.** Definition (24) in Instruction 21.01 sets forth the statutory definition of “practitioner” for these offenses.

**Knowing Action.** Under 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (3) of the above Instruction.

**First Offender Provision.** Under subsection (b) of 19 V.I.C. § 607 the court has a range of discretion in shaping the disposition of charges for certain first offenders.

**Marijuana Possession.** Under 19 V.I.C. § 607a, possession or use of one ounce or less is subject only to civil offense subject to fine.

## **21.21 Distribution of Controlled Substance to Person Under 18**

The defendant is charged with the crime of distributing a controlled substance to a person under the age of 18. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant distributed a controlled substance to a person under the age of 18; and
- (2) Defendant was not authorized to do so; and
- (3) Defendant acted intentionally or knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and
- (4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

### 19 V.I. Code § 608

#### ***Practice Note***

The text of 19 V.I.C. § 608 is as follows:

#### **§ 608. Distribution to persons under age eighteen**

(a) Any person who violates section 604(a)(1) of this chapter by distributing a controlled substance to a person under eighteen years of age is (except as provided in subsection (b) of this section) punishable by (1) a term of imprisonment and a fine equal to twice that authorized by section 604(b), and (2) equal to twice any special parole term authorized by section 604(b), for a first offense involving the same controlled substance and schedule.

(b) Any person at least eighteen years of age who violates section 604(a)(1) by distributing a controlled substance to a person under eighteen years of age after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by (1) a term of imprisonment and a fine equal to three times that authorized by section 604(b), and (2) equal to three times any special parole term authorized by section 604(b), for a second or subsequent offense involving the same controlled substance and schedule.

**Knowing Action.** Under 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (3) of the above Instruction.

### **21.23 Use of a Juvenile in Drug Distribution**

The defendant is charged with the crime of using a juvenile in drug distribution. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [used; solicited; directed; hired; employed] a person 17 years of age or younger to violate the drug laws; and
- (2) Defendant (himself; herself) was at least 18 years of age; and
- (3) Defendant acted knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and
- (4) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

19 V.I. Code § 608a

#### ***Practice Note***

The text of 19 V.I.C. § 608a is as follows:

##### **§ 608a. Use of a juvenile in drug distribution**

(a) Notwithstanding the provisions of section 604 of this title, any person, being at least 18 years of age, who knowingly uses, solicits, directs, hires, or employs a person 17 years of age or younger to violate any section of chapter 29 of this title, and is found to have violated this section is guilty of a crime and shall be sentenced to an additional term not to exceed 15 years which shall include the imposition of a minimum term which shall be fixed at one-third of the sentence imposed, during which the defendant shall be ineligible for parole. The court may also impose a fine not to exceed \$300,000 or five times the street value of the controlled substance or controlled substance analog involved, whichever is greater.

(b) It shall be no defense to a prosecution under this section that the person mistakenly believed that the person who was used, solicited, directed, hired, or employed was 18 years or older, even if such mistaken belief was reasonable.

(c) Nothing in this section shall be construed to preclude or limit a prosecution or conviction for a violation of any other offense defined in this chapter or any provision of law governing one person's liability for the conduct of another, and a conviction arising under this section shall not merge with a conviction for a violation of the provisions of this chapter.

**Knowing Action.** Under 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – or in the Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (3) of the above Instruction.

**Mistaken Belief Not a Defense.** Subsection (b) of the statute expressly states that it is not a defense to prosecution under this statute that the defendant mistakenly believed that the person who was used, solicited, directed, hired, or employed was 18 years or older, even if such mistaken belief was reasonable.

## **21.25 Maintaining or Operating Controlled Substance Production Facilities**

The defendant is charged with the crime of maintaining or operating a controlled substance production facility. The People must prove beyond a reasonable doubt each of the following elements of that crime:

### **(1) The defendant**

*\* Select element(s) charged in this case \**

... [maintained; operated] a [premises; place; facility] used for the manufacture of [methamphetamine; lysergic acid diethylamide; phencyclidine; any substance classified as a narcotic drug in Schedule I or II; the analog of any substance classified as a narcotic drug in Schedule I or II];

... [aided; promoted; financed; otherwise participated in] the [maintenance; operation] of a [premises; place; facility] used for the manufacture of [methamphetamine; lysergic acid diethylamide; phencyclidine; any substance classified as a narcotic drug in Schedule I or II; the analog of any substance classified as a narcotic drug in Schedule I or II];

and

(2) Defendant acted knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and

(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

19 V.I. Code § 608b

### ***Practice Note***

The text of 19 V.I.C. § 608b is as follows:

#### **§ 608b. Maintaining or operating controlled substance production facilities**

In addition to any other provision of law, any person who knowingly maintains or operates any premises, place, or facility used for the manufacture of methamphetamine, lysergic acid diethylamide, phencyclidine or any substance classified as a narcotic drug in Schedule I or II, or the analog of any such substance, or any person who knowingly aids, promotes, finances or otherwise participates in the maintenance or operation of such premises, place or facility, shall be guilty of a crime and shall be sentenced to a term of imprisonment of not less than 10 nor more than 20 years, which shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, during which the defendant shall be ineligible for parole. The Court shall also impose a fine not to exceed \$500,000 or five times the street value of all controlled dangerous substances or controlled substance analogs at any time manufactured or stored at such premises, place, or facility, whichever is greater.

**Knowing Action.** Under 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “*knowingly*” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or

omission.” Since there is no specialized definition of this term in the V.I. Code chapter to which the present Instruction relates – or in the statute prescribing the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

## **21.27 Continuing Criminal Enterprise**

The defendant is charged with the crime of engaging in a continuing criminal enterprise. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant engaged in a continuing series of drug violations in concert with five or more other persons for whom defendant was [an organizer; a supervisor; a manager]; and**
- (2) Defendant obtained substantial [income; resources] from this activity; and**
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

19 V.I. Code § 611

### ***Practice Note***

The text of 19 V.I.C. § 611 is as follows:

#### **§ 611. Continuing criminal enterprise**

(a)

(1) Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 10 years and which may be up to life imprisonment, to a fine of not more than \$100,000, and to the forfeiture prescribed in paragraph (2); except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 20 years and

which may be up to life imprisonment, to a fine of not more than \$200,000, and to the forfeiture prescribed in paragraph (2).

(2) Any person who is convicted under paragraph (1) of engaging in a continuing criminal enterprise shall forfeit to the Government of the Virgin Islands—

(A) the profits obtained by him in such enterprise, and

(B) any of his interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

(b) For purposes of subsection (a), a person is engaged in a continuing criminal enterprise if—

(1) he violates any provision of this chapter the punishment for which is a felony, and

(2) such violation is a part of a continuing series of violations of this chapter—

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources.

## **21.29 Manufacture or Distribution of Drugs Causing Death**

**The defendant is charged with the crime of [manufacture; distribution] of a controlled substance resulting in the death of a user thereof. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant [manufactured; distributed; dispensed] [methamphetamine; lysergic acid diethylamide; phencyclidine; any other controlled dangerous substance]; and**
- (2) A death resulted that would not have occurred except for the [injection; inhalation; ingestion] of that substance; and**
- (3) The death was not too remote in its occurrence – or too dependent upon conduct of another person unrelated to [injection; inhalation; ingestion] of the substance or its effect – as to have a just bearing on the defendant's liability; and**
- (4) The defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**



If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

19 V.I. Code § 612a

### *Practice Note*

The text of 19 V.I.C. § 612a is as follows:

#### § 612a. Liability for drug-induced deaths

(a) Notwithstanding any other provisions of law to the contrary, any person who manufactures, distributes, or dispenses methamphetamine, lysergic acid diethylamide, phencyclidine or any other controlled dangerous substance classified in section 595 of this title schedules I or II, or any controlled substance analog thereof, in violation of section 604 of this chapter, shall be liable for a death which results from the injection, inhalation, or ingestion of that substance, and is guilty of a crime punishable by life imprisonment without parole.

(b) For purposes of this offense the defendant's act of manufacturing, distributing, or dispensing a substance is the cause of death when:

(1) The injection, inhalation, or ingestion of the substance is an antecedent but for which the death would not have occurred; and

(2) The death was not:

(i) Too remote in its occurrence as to have a just bearing on the defendant's liability; or

(ii) Too dependent upon conduct of another person which was unrelated to injection, inhalation, or ingestion of the substance or its effect as to have a just bearing on the defendant's liability.

\* \* \* \*

**Victim's Own Culpability Not a Defense.** In a prosecution under this statute, under subsection (c) of 19 V.I.C. § 612a, it is not a defense that "the decedent contributed to his own death by his purposeful, knowing, reckless, or negligent injection, inhalation, or ingestion of the substance or its effect."

## **21.31 Trafficking in a Controlled Substance**

The defendant is charged with the crime of trafficking in a controlled substance. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant knowingly** [sold; manufactured; delivered; brought into this Territory; is in actual or constructive possession of]:

*\* Select element(s) charged in this case \**

... in excess of 50 pounds of [marijuana; synthetic marijuana];

... in excess of one pound of [hashish; hashish oil];

... 6 grams or more of [cocaine; any mixture containing cocaine];

... 100 units or more of a controlled substance which is a [stimulant; depressant; hallucinogenic drug];

... 2 grams or more of any [morphine; opium; salt of morphine; isomer of morphine; salt of any isomer of morphine; salt of any isomer of opium; heroin];

... 2 grams or more of any mixture containing any [morphine; opium; salt of morphine; isomer of morphine; salt of any isomer of morphine; salt of any isomer of opium; heroin];

and

**(2) The defendant did so without legal authority; and**

**(3) This conduct took place on or about <date> in** [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

19 V.I. Code § 614a

### ***Practice Note***

The text of 19 V.I.C. § 614a is as follows:

**§ 614a. Trafficking in certain controlled substances; mandatory sentences; suspension or reduction**

(a) Notwithstanding any other provision of law:

- (1) Any person who knowingly sells, manufactures, delivers, or brings into this Territory, or who is knowingly in actual or constructive possession of, in excess of 50 pounds of marijuana or synthetic marijuana is guilty of a felony which shall be known as “trafficking in marijuana or synthetic marijuana”. If the quantity of marijuana or synthetic marijuana involved:
  - (A) is in excess of 50 pounds, but less than 200 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 calendar years and to pay a fine of \$25,000;
  - (B) is 200 pounds or more, but less than 1,000 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of 5 calendar years and to pay a fine of \$50,000;
  - (C) is 1,000 pounds or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$200,000.
- (2) Any person who knowingly sells, manufactures, delivers, or brings into this Territory, or who is knowingly in actual or constructive possession of, in excess of one pound of hashish or hashish oil is guilty of a felony which shall be known as “trafficking in hashish”. If the quantity of hashish involved:
  - (A) is in excess of one pound but less than 10 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 calendar years and to pay a fine of \$25,000;
  - (B) is 10 pounds or more, but less than 100 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of 5 calendar years and to pay a fine of \$50,000;
  - (C) is 100 pounds or more, such a person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$200,000.
- (3) Any person who knowingly sells, manufactures, delivers, or brings into this Territory, or who is knowingly in actual or constructive possession of 6 grams or more of cocaine or of any mixture containing cocaine, as described in Schedule II(a)(4) of section 595(b) of this chapter, is guilty of a felony which shall be known as “trafficking in cocaine”. If the quantity involved:
  - (A) is 6 grams or more, but less than 26 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 calendar years and to pay a fine of \$50,000;
  - (B) is 26 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of

imprisonment of 5 calendar years and to pay a fine of \$100,000;

- (C) is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$250,000.
- (4) Any person who knowingly sells, manufactures, delivers, or brings into this Territory, or who is knowingly in actual or constructive possession of 100 units or more of a controlled substance which is either a stimulant, depressant or hallucinogenic drug is guilty of a felony which shall be known as “trafficking in dangerous drugs”. For the purposes of this paragraph “unit” means that quantity of the controlled substance in question which is generally utilized in a single human dosage, as determined by the Commissioner of Health, whether packaged in dosage form or not. If the quantity involved:
  - (A) is 100 units or more, but less than 500 units, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 calendar years and to pay a fine of \$50,000;
  - (B) is 500 units or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 5 calendar years and to pay a fine of \$100,000;
  - (C) is 2,000 units or more, such person shall be sentenced to a mandatory term of imprisonment of 15 calendar years and to pay a fine of \$250,000.
- (5) Any person who knowingly sells, manufactures, delivers, or brings into this Territory, or who is knowingly in actual or constructive possession of, 2 grams or more of any morphine, opium, or any salt, isomer, or salt of any isomer thereof, including heroin, as described in Schedule I(b) or section 595(b) of this chapter, or 2 grams or more of any mixture containing any such substance, is guilty of a felony which shall be known as “trafficking in morphine” or “trafficking in opium” as the case may be. If the quantity involved:
  - (A) is 2 grams or more, but less than 6 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 calendar years and to pay a fine of \$50,000;
  - (B) is 6 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a fine of \$100,000;
  - (C) is 14 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and to pay a fine of \$500,000.

- (b) Notwithstanding any other provisions of law with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section.
- (c) The prosecuting attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, co-conspirators, or principals. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if he finds that the defendant rendered such substantial assistance.

### **21.33 Distribution of Imitation Controlled Substance to Person Under 18 or to a Person Adjudged Mentally Incompetent**

The defendant is charged with the crime of distributing an imitation controlled substance to a person [under the age of 18; adjudged mentally incompetent]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant distributed an imitation controlled substance to a person [under 18 years of age; who has been adjudged mentally incompetent]; and
- (2) Defendant acted knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

19 V.I. Code § 614b

## ***Practice Note***

The text of 19 V.I.C. § 614b is as follows:

### **§ 614b. § Distribution of an imitation controlled substance to person under 18**

Any person who knowingly distributes an imitation controlled substance, as defined in section 593 of this chapter, to a person under 18 years of age or to a person who has been adjudged mentally incompetent is guilty of a misdemeanor and shall, if convicted, be subject to imprisonment for not more than one year in jail or a fine of not more than two thousand dollars (\$2,000), or both. Upon a second or subsequent conviction of this offense, the person shall be subject to imprisonment for not more than one year in jail and a fine of not less than five thousand dollars (\$5,000).

**Knowing Action.** Under 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “*knowingly*” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the V.I. Code chapter to which the present Instruction relates – or in the statute prescribing the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

## **21.35 Drug Paraphernalia**

**The defendant is charged with the crime** of [using; possessing with intent to use; delivering; furnishing; transferring; possessing with intent to deliver, furnish or transfer] **drug paraphernalia. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

### **(1) The defendant**

*\* Select element(s) charged in this case \**

- ... [used; possessed with intent to use] drug paraphernalia for an unlawful purpose;
- ... [delivered; furnished; transferred; possessed with intent to deliver, furnish or transfer; manufactured with intent to deliver, furnish or transfer] drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used for one or more unlawful purposes;
- ... [sold; offered for sale; possessed with intent to sell or offer for sale; purchased], drug paraphernalia knowing, or under circumstances where

- one reasonably should know that the paraphernalia is [possessed; sold; offered for sale; purchased] **for one or more unlawful purposes;**
- ... **placed in any** [newspaper; magazine; handbill; publication] **any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, was to promote the sale of objects designed or intended for use as drug paraphernalia;**
- ... **being 18 years of age or over,** [delivered; furnished; transferred] **drug paraphernalia to a person under 18 years of age;**

and

**(2) This conduct took place on or about <date> in** [this judicial division; <name of judicial division>].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**19 V.I. Code § 630**

### ***Practice Note***

The text of 19 V.I.C. § 630 is as follows:

**§ 630. Use, possession, sale, manufacture, distribution, delivery, purchase and advertisement of drug paraphernalia**

(a) It shall be unlawful for any person, firm or corporation to use, or possess with intent to use, drug paraphernalia for one or more purposes stated in section 593, paragraph (15) of this chapter. Violation of this subsection is a misdemeanor punishable by imprisonment of not more than one year, a fine of not more than \$5000, or both.

(b) It shall be unlawful for any person, firm, or corporation to deliver, furnish or transfer or possess with intent to deliver, furnish or transfer, or manufacture with intent to deliver, furnish or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used for one or more purposes stated in section 593, paragraph (15) of this chapter. Violation of this subsection is punishable by a term of

imprisonment of not more than three years, a fine of not more than \$15,000 or both.

(c) It shall be unlawful for any person, firm or corporation to sell, offer for sale, or possess with intent to sell or offer for sale, or purchase, drug paraphernalia knowing, or under circumstances where one reasonably should know that the paraphernalia is possessed, sold or offered for sale or purchased for one or more purposes stated in section 593, paragraph (15) of this chapter. Violation of this subsection is punishable as provided for in subsection (b) of this section.

(d) It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Violation of this section is punishable as provided for in subsection (a) of this section.

(e) Any person, 18 years of age or over, who violates subsection (b) by delivering, furnishing or transferring drug paraphernalia to a person under 18 years of age is subject to punishment as provided for in subsection (b) of this section.

**Eighteen Year Olds.** Subsection (e) of the statute provides that any person, 18 years of age or over, who violates subsection (b) by delivering, furnishing or transferring drug paraphernalia to a person under 18 years of age is subject to punishment as provided for in subsection (b) of the section.

## **21.37 Unlawful Sale, Possession or Use of Hypodermic Syringes or Needles**

**The defendant is charged with the crime of unlawful possession, sale or use of hypodermic [syringes; needles]. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [sold; furnished] **to any** [person; persons] **other than** [a duly licensed physician, dentist, veterinarian, undertaker, nurse, or podiatrist; a registered pharmacy or drug store; a hospital, sanitarium, clinical laboratory or other medical institution; a regular dealer in medical, dental or surgical supplies; a resident physician or intern of a hospital, sanitarium or other medical



- institution] a [hypodermic syringe; hypodermic needle] **without a written prescription from a duly licensed** [physician; veterinarian];
- ... [possessed; had under (his; her) control] a [hypodermic syringe; hypodermic needle; any instrument or implement adapted for administering narcotic drugs], **without a valid written prescription, written within the preceding one-year period, for use** [authorized; directed] by a duly licensed [physician; veterinarian]; **and defendant** (himself; herself) **was not then** [a duly licensed physician, dentist, veterinarian, nurse, or podiatrist; a hospital, sanitarium or other medical institution; a resident physician or intern of a hospital, sanitarium or other medical institution; engaged in the regular business of dealing in medical, dental and surgical supplies; operating a clinical laboratory; maintaining a registered pharmacy or drug store; maintaining an undertaking establishment];
- ... **lawfully obtained a** [hypodermic needle; hypodermic syringe; any instrument or implement adapted for the administering of narcotic drugs], **and then** [permitted; caused], **directly or indirectly, such** [needle; syringe; instrument or implement] **to be used for any purpose other than that for which it was lawfully** [purchased; obtained];
- ... **obtained possession of a** [hypodermic needle; hypodermic syringe; any instrument or implement adapted for administering of narcotic drugs] **by a** [false representation or design; fraudulent representation or design; forged or fictitious name];
- ... obtained possession of a [hypodermic needle; hypodermic syringe; any instrument or implement adapted for administering of narcotic drugs] in a manner contrary to or in violation of any provision of law;

**and**

**(2) This conduct took place on or about** *<date>* **in** [this judicial division; *<name of judicial division>*].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**19 V.I. Code § 630a**

## ***Practice Note***

The text of 19 V.I.C. § 630a is as follows:

### **§ 630a. Sale and possession of hypodermic syringes and hypodermic needles; possession of certain other instruments**

(a) It shall be unlawful for any person to sell or furnish to any person or persons other than a duly licensed physician, dentist, veterinarian, undertaker, nurse, podiatrist, or a registered pharmacy or drug store, hospital, sanitarium, clinical laboratory or other medical institution, or a regular dealer in medical, dental or surgical supplies, or a resident physician or intern of a hospital, sanitarium or other medical institution, a hypodermic syringe or hypodermic needle except pursuant to a written prescription of a duly licensed physician or veterinarian.

(b) Every person so selling or furnishing syringe or hypodermic needle, shall record upon the face of the prescription, over his signature, the date of the sale or furnishing of the hypodermic syringe or hypodermic needle. Such prescription shall be retained on file for a period of two years and be readily accessible for inspection by any public officer or employee engaged in the enforcement of this section. A prescription filed in accordance with this section shall be sufficient authority, without the necessity of a renewal or reissuance, to permit subsequent sales or the furnishing of hypodermic syringes or hypodermic needles to the person to whom the prescription was issued for a period of one year from the date of its original issuance.

(c) It shall be unlawful for any person or persons, except a duly licensed physician, dentist, veterinarian, nurse, podiatrist, hospital, sanitarium or other medical institution, or a resident physician or intern of a hospital, sanitarium or other medical institution, or those engaged in the regular business of dealing in medical, dental and surgical supplies, operating a clinical laboratory, maintaining a registered pharmacy or drug store, or maintaining an undertaking establishment, to have under control or possess, a hypodermic syringe or hypodermic needle, or any other instrument or implement adapted for the administering of narcotic drugs which other instrument or implement is possessed for that purpose, unless such possession be obtained upon a valid written prescription form, and such use be authorized or directed by, a duly licensed physician or veterinarian. For the purposes of this subdivision no such prescription shall be valid, which has been outstanding for more than one year.

(d) It shall be unlawful for any person who has lawfully obtained a hypodermic needle, hypodermic syringe or any other instrument or implement adapted for the administering of narcotic drugs to permit or cause, directly or indirectly, such needle, syringe, instrument or implement to be used for any purpose other than that for which it was lawfully purchased or obtained.

(e) It shall be unlawful for any person to obtain possession of a hypodermic needle, hypodermic syringe or any other instrument or implement adapted for administering of narcotic drugs by a false or fraudulent representation or design or by a forged or fictitious name, or contrary to or in violation of any of the provisions of this section.

(f) Any used hypodermic needle, hypodermic syringe, or other instrument or implement adapted for the administering of narcotic drugs which is to be disposed of shall be destroyed in such a manner as to render such unit or units unfit for reuse in any manner.

## Chapter 22. EMBEZZLEMENT 14 V.I.C. § 1087 – 1094

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### 22.01 Embezzlement -- Definition

Embezzlement is defined by our laws as the fraudulent appropriation of property by a person to whom it has been entrusted.

#### Sources & Authority

14 V.I. Code § 1087

#### ***Practice Note***

**Application of Embezzlement Crime to Undelivered Negotiable Instruments.** Under 14 V.I.C. § 1088, “[a]ny evidence of debt, negotiable by delivery only, and actually executed, is the subject of embezzlement, whether it has been delivered or issued as a valid instrument or not.”

**Theft Distinguished.** Many decades ago, the Third Circuit Federal Court of Appeals held that an employee’s use of a key obtained in the workplace to access stored goods in a storeroom, which he took and later sold, was not embezzlement. *Gov’t of the Virgin Islands v. Leonard*, 548 F.2d 478 (3d Cir. 1977).

**Valuation and Punishment.** The V.I. Code in Title 14, § 1094, provides that if the property or money embezzled was less than \$100 in value, the person found guilty may be fined not more than \$200 or imprisoned not more than 1 year, or both; if the property or money embezzled was \$100 or more in value, be imprisoned not more than 10 years. And under subsection (b) of that provision, where there the property embezzled is an evidence of debt or right of action the sum due upon it or secured to be paid shall be taken as its value.

## **22.03 Embezzlement by Public or Private Officer**

The defendant is charged with the crime of embezzlement. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That on or about** *<date>* **in** [this judicial division; *<name of judicial division>*] **the defendant was**

*\* Select element(s) charged in this case \**

... an officer of [the government of the Virgin Islands; a subdivision of the government of the Virgin Islands];

... a [deputy; clerk; servant] of an officer of [the government of the Virgin Islands; a subdivision of the government of the Virgin Islands];

... [an officer; a director; a trustee; a clerk; a servant; an attorney; an agent] of any [public; private] [association; society; corporation];

**and**

**(2) While** (he; she) **held that position, defendant** [fraudulently appropriated; secreted with a fraudulent intent to appropriate] **any property which** (he; she) **had** [in (his; her) possession; under (his; her) control] **by virtue of** (his; her) **trust; and**

**(3) Defendant** [used the property; acted for a purpose] **not in the due and lawful execution of** (his; her) **trust.**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### **Sources & Authority**

**14 V.I. Code § 1089**

### ***Practice Note***

The text of 14 V.I.C. § 1089 provides as follows:

#### **§ 1089. Embezzlement by public and private officers**

Whoever, being an officer of the Virgin Islands or a subdivision thereof, or a deputy, clerk, or servant of such officer, or an officer, director, trustee, clerk, servant, attorney, or agent of

any association, society, or corporation (public or private), fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

## **22.05 Embezzlement by Carrier or Transporter**

The defendant is charged with the crime of embezzlement by a carrier or transporter of property. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant was a carrier or other person having under (his; her) control personal property for the purpose of transportation for hire; and

(2) Defendant fraudulently appropriated the property to any use or purpose, inconsistent with its safekeeping and its transportation according to (his; her) trust.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1090

### ***Practice Note***

The text of 14 V.I.C. § 1090 provides:

#### **§ 1090. Embezzlement by carriers**

Whoever, being a carrier or other person having under his control personal property for the purpose of transportation for hire, fraudulently appropriates it to any use or purpose, inconsistent with the safekeeping of such property and its transportation according to his trust is guilty of embezzlement, whether he has broken the package in which such property is contained or has otherwise separated the items thereof, or not.

**Breaking the Packaging – Or Not.** Note that § 10190 expressly provides that a defendant who appropriates the property for a purpose inconsistent with its safekeeping and transportation may be found guilty whether or not the defendant has broken the package in which the property was contained or has otherwise separated the items thereof.

## **22.07 Embezzlement by a Fiduciary**

The defendant is charged with the crime of embezzlement by a fiduciary. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant was a [trustee; banker; merchant; broker; attorney; agent; assignee in trust; executor; administrator; collector; person otherwise] intrusted with or having in (his; her) control property for the use of any other person; and

(2) Defendant [fraudulently appropriated; secreted with a fraudulent intent to appropriate] such property for any use or purpose not in the due and lawful execution of (his; her) trust.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1091

### ***Practice Note***

The text of 14 V.I.C. § 1091 provides:

#### **§ 1091. Embezzlement by fiduciaries**

Whoever, being a trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

## **22.09 Embezzlement by a Bailee**

The defendant is charged with the crime of embezzlement by a bailee. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant was entrusted with any property [as bailee, tenant, or lodger; with any power of attorney for the sale or transfer thereof]; and

(2) The defendant [fraudulently converted the property or the proceeds thereof to (his; her) own use; secreted the property with a fraudulent intent to convert to (his; her) own use].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1092

### ***Practice Note***

The text of 14 V.I.C. § 1092 provides as follows:

#### **§ 1092. Embezzlement by bailee**

Whoever, being entrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement.



## **22.11 Embezzlement by a Clerk, Agent or Employee**

The defendant is charged with the crime of embezzlement by a clerk, agent or employee. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant was [a clerk; an agent; a servant] of *<name of employer or principal>*; and

(2) The defendant [fraudulently appropriated to (his; her) own use; secreted with a fraudulent intent to appropriate to his own use] **any property of** *<name of employer or principal>* **which had come into** (his; her) **control or care by virtue of** (his; her) **employment as** [a clerk; an agent; a servant] **of** *<name of employer or principal>*.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1093

### ***Practice Note***

The text of 14 V.I.C. § 1093 provides as follows:

#### **§ 1093. Embezzlement by clerks, agents, employees, etc.**

Whoever, being a clerk, agent, or servant of any person, fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of another which has come into his control or care by virtue of his employment as such clerk, agent or servant, is guilty of embezzlement.

## Chapter 23. ESCAPE & RELATED OFFENSES 14 V.I.C. §§ 661-667, 3020

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### 23.01 Escape from Jail

The defendant is charged with the crime of escape from jail. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant was in jail; and
- (2) Defendant escaped from the confines of such jail.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 661

## ***Practice Note***

The text of 14 V.I.C. § 661 provides as follows:

### **§ 661. Escape from jail or custody of officer**

Whoever escapes from the custody of the Police Commissioner or his authorized representative, or from any jail in which he is confined, or from any custody under or by virtue of any process issued under the laws of the Virgin Islands by any court, judge, or commissioner, or from the custody of any officer or employee of the Virgin Islands pursuant to lawful arrest, shall—

(1) if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined not more than \$2,000 or imprisoned not more than 10 years, or both; or

(2) if the custody or confinement is for extradition or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction therefor, be fined not more than \$500 or imprisoned not more than 1 year, or both.

### **23.03 Escape from Lawful Custody**

The defendant is charged with the crime of escape from custody. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant was in the custody of**

*\* Select element(s) charged in this case \**

... [the Police Commissioner; an authorized officer or representative of the Virgin Islands] under or by virtue of any process issued under the laws of the Virgin Islands by any court, judge, or commissioner;

... any officer or employee of the Virgin Islands pursuant to lawful arrest;

**and**

**(2) Defendant escaped from such custody.**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

## Sources & Authority

14 V.I. Code § 661

### ***Practice Note***

The text of 14 V.I.C. § 661 provides as follows:

#### **§ 661. Escape from jail or custody of officer**

Whoever escapes from the custody of the Police Commissioner or his authorized representative, or from any jail in which he is confined, or from any custody under or by virtue of any process issued under the laws of the Virgin Islands by any court, judge, or commissioner, or from the custody of any officer or employee of the Virgin Islands pursuant to lawful arrest, shall—

(1) if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined not more than \$2,000 or imprisoned not more than 10 years, or both; or

(2) if the custody or confinement is for extradition or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction therefor, be fined not more than \$500 or imprisoned not more than 1 year, or both.

### **23.05 Rescuing or Assisting Escape**

**The defendant is charged with the crime of [rescuing; attempting to rescue; aiding or assisting the escape of] another person from custody. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) That on or about <date> in [this judicial division; <name of judicial division>] <name of person in custody> [was in jail; had been arrested upon a warrant or other process issued under any law of the Virgin Islands; was committed to the custody of the Police Commissioner]; and**

**(2) Defendant [rescued; attempted to rescue; instigated a rescue of; aided or assisted the escape of] <name of person in custody>.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 662**

### ***Practice Note***

Title 14 V.I.C. § 662 provides:

#### **§ 662. Rescuing and assisting escape**

Whoever rescues or attempts to rescue or instigates, aids or assists the escape of a person arrested upon a warrant or other process issued under any law of the Virgin Islands, or committed to the custody of the Police Commissioner or to any jail, shall—

(1) if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined not more than \$2,000 or imprisoned not more than 10 years, or both; or

(2) if the custody or confinement is for extradition or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction therefor, be fined not more than \$500 or imprisoned not more than 1 year, or both.

### **23.07 Officer Voluntarily Permitting Escape**

**The defendant is charged with the crime of being an officer with custody of a prisoner and voluntarily allowing (him; her) to escape from custody. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) That on or about <date> in [this judicial division; <name of judicial division>] <name of person in custody> was a prisoner who was in the custody of the defendant; and**

**(2) Defendant voluntarily permitted this prisoner to escape.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

## Sources & Authority

14 V.I. Code § 663

### ***Practice Note***

Title 14 V.I.C. § 663(a)(1) provides:

#### **§ 663. Officer voluntarily permitting escape**

Whoever, having in his custody any prisoner by virtue of process issued under the laws of the Virgin Islands by any court, judge, or commissioner, shall—

(1) if he voluntarily suffers such prisoner to escape, be fined not more than \$2,000 or imprisoned not more than 10 years, or both;

### **23.09 Officer Negligently Permitting Escape**

The defendant is charged with the crime of being an officer with custody of a prisoner and negligently allowing (him; her) to escape from custody. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] *<name of person in custody>* was a prisoner who was in the custody of the defendant; and

(2) Defendant negligently permitted this prisoner to escape.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

## Sources & Authority

14 V.I. Code § 663

### ***Practice Note***

Title 14 V.I.C. § 663(a)(2) provides:

**§ 663. Officer voluntarily permitting escape**

Whoever, having in his custody any prisoner by virtue of process issued under the laws of the Virgin Islands by any court, judge, or commissioner, shall—

\* \* \* \*

(2) if he negligently suffers such person to escape, be fined not more than \$500 or imprisoned not more than 1 year, or both.

**23.11 Promoting Prison Contraband (Misdemeanor)**

The defendant is charged with the crime of promoting prison contraband. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant**

*\* Select element(s) charged in this case \**

... introduced any contraband into a [prison; detention facility];

... was a person confined in a [prison; detention facility] and [made; obtained; possessed] any contraband;

**and**

**(2) Defendant acted knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal.**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

**Sources & Authority**

14 V.I. Code § 664

***Practice Note***

Title 14 V.I.C. § 664 provides:

**§ 664. Promoting prison contraband**

A person is guilty of a misdemeanor for promoting prison contraband when:

(1) He knowingly introduces any contraband into a prison or detention facility; or

(2) Being a person confined in a prison or detention facility, he knowingly makes, obtains or possesses any contraband.

(3) For the purpose of this section, contraband means any article or thing which a person confined in a prison or detention facility is prohibited from obtaining or possessing by statute, rule, regulation or order.

(4) For the purpose of this section, alcoholic beverages shall constitute contraband.

### **23.13 Promoting Prison Contraband -- Definitions**

**“Contraband” means any article or thing which a person confined in a prison or detention facility is prohibited from obtaining or possessing by statute, rule, regulation or order [and includes, but is not limited to, alcoholic beverages].**

#### **Sources & Authority**

14 V.I. Code § 664

#### ***Practice Note***

It is recommended that the alcohol portion of the definition only be used in a case where the facts to be presented to the jury include that category of item.

### **23.15 Promoting Dangerous Prison Contraband (Felony)**

**The defendant is charged with the crime of promoting dangerous prison contraband. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant**

***\* Select element(s) charged in this case \****

... [introduced any dangerous contraband into a [prison; detention facility];

... was a person confined in a [prison; detention facility] and [made; obtained; possessed] any dangerous contraband;



and

(2) Defendant acted knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 665

### ***Practice Note***

Title 14 V.I.C. § 665(a) provides:

#### **§ 665. Promoting dangerous prison contraband**

(a) A person is guilty of a felony for promoting dangerous prison contraband when:

(1) He knowingly introduces any dangerous contraband into a prison or detention facility; or

(2) Being a person confined in a prison or detention facility, he knowingly makes, obtains or possesses any dangerous contraband.

(3) For the purpose of this section, dangerous contraband means contraband which is capable of such use as may endanger the safety or security of a prison or detention facility or any person therein, and shall include any item to assist escape.

### **23.17 Promoting Dangerous Prison Contraband -- Definition**

“Dangerous contraband” means any article or thing which a person confined in a prison or detention facility is prohibited from obtaining or possessing by statute, rule, regulation or order, and which is may endanger the safety or security of a prison or detention facility or any person therein.

[Dangerous contraband includes, but is not limited to, any item to assist escape.]

### Sources & Authority

14 V.I. Code § 665

## ***Practice Note***

Title 14 V.I.C. § 665(a)(3), quoted above, provides:

(3) For the purpose of this section, dangerous contraband means contraband which is capable of such use as may endanger the safety or security of a prison or detention facility or any person therein, and shall include any item to assist escape.

It is recommended that the “item to assist escape” portion of the statutory definition only be used in a case where the facts to be presented to the jury include that category of item.

### **23.19 Telephone, Communication or Connection Devices**

**The defendant is charged with the crime of promoting prison contraband in the form of a [telephone; communication device; connection device]. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) That the defendant** [introduced; possessed; delivered] [into; in] **a** [prison; detention facility] **a** [mobile telephone, commercial communication device; electronic device capable of connecting to the internet]; **and**

**(2) This conduct took place on or about** <date> **in** [this judicial division; <name of judicial division>].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 665**

## ***Practice Note***

Title 14 V.I.C. § 665(b) provides:

### **§ 665. Promoting dangerous prison contraband**

(b) It shall be unlawful for any person to introduce, possess or deliver a mobile telephone, commercial communication devices or electronic devices which are capable of connecting to the internet, into a prison or detention facility. This shall not include mobile telephones and laptop computers that are the property of employees, contractors or employees of contractors, or volunteers,

and are exclusively for the personal use of that employee, contractor or employee of a contractor, or volunteer. Anyone who violates this subsection is guilty of a felony and shall be imprisoned not more than five years.

**Exemptions.** Note that § 665(b) exempts from the definition of this crime mobile telephones and laptop computers that are the property of employees, contractors or employees of contractors, or volunteers, and are exclusively for the personal use of that employee, contractor or employee of a contractor, or volunteer.

### **23.21 Introducing Narcotic or Addictive Drug Into Prison**

The defendant is charged with the crime of introducing a [narcotic; addictive drug] into prison. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant introduced any [narcotic; addictive drug] into a [prison; detention facility]; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 666

#### ***Practice Note***

Title 14 V.I.C. § 666 provides:

#### **§ 666. Introduction of narcotic or addictive drug into prison**

Any person who knowingly introduces any narcotic drug into a prison or detention facility shall be imprisoned not more than 10 years. For the purpose of this section narcotic drug means coca leaves, opium, cannabis, and every other substance neither chemically nor physically distinguishable from them; and other drugs to which the Federal narcotic laws may apply; and any drug found by the Attorney General of the United States or by the Commissioner of Health, after reasonable notice and opportunity

for hearing, to have an addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the effective date of determination of such finding by said Attorney General or Commissioner of Health.

### **23.23 Introducing Narcotic or Additive Drug Into Prison -- Definition**

**“Narcotic drug” for purposes of this case means** [coca leaves; opium; cannabis; every substance neither chemically nor physically distinguishable from coca leaves, opium, or cannabis; other drugs to which the Federal narcotic laws may apply; any drug found by the Attorney General of the United States or by the Commissioner of Health, after reasonable notice and opportunity for hearing, to have an addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the effective date of determination of such finding by said Attorney General or Commissioner of Health].

#### **Sources & Authority**

14 V.I. Code § 666

#### ***Practice Note***

It is recommended that the relevant portion(s) of the statutory definitional list found Title 14 V.I.C. § 666(b) be selected to match the facts to be presented by the evidence in any individual case, to avoid confusing the jury with references to substances not involved in the matter before them.

### **23.25 Sexual Relations with a Detainee**

**The defendant is charged with the crime of engaging in consensual sexual relations with a person who is in the custody of a detention facility. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) That on or about <date> in** [this judicial division; <name of judicial division>] **the defendant was** [an employee working; a contractor or employee of a contractor; or a volunteer] **at a** [prison; detention facility]; **and**

**(2) While being** [an employee; a contractor; a volunteer] **at a** [prison; detention facility] **the defendant engaged in consensual sexual relations with a person who was in the custody of such** [prison; detention facility].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 667

### ***Practice Note***

Title 14 V.I.C. § 667(a) provides:

#### **§ 667. Sexual relations with a detainee**

(a) Any person who, when, being an employee working at a prison or detention facility, a contractor or employee of a contractor at a prison or detention facility, or a volunteer at a prison or detention facility, engages in consensual sexual relations with a person who is in the custody of a detention facility, is guilty of the crime of sexual relations with a detainee and shall be imprisoned not more than 10 years. This does not include any act done for a bona fide medical purpose or an internal search conducted in the lawful performance of an employee's duties.

### **23.27 Sexual Relations with a Detainee -- Definitions**

For purposes of this case:

“Sexual relations” means:

- (1) Any act of physical union of the genitalia or anus of one person with the mouth, anus or genitalia of another person. It occurs upon any penetration, however slight. Ejaculation is not required; or
- (2) Any act of cunnilingus or fellatio regardless of whether penetration occurs, Ejaculation is not required.
  - (A) “Cunnilingus” means any oral contact with the female genitalia.
  - (B) “Fellatio” means any oral contact with the male genitalia.
  - (C) For the purpose of subsection (a), “sexual penetration” means:
    - (1) The unlawful placement of an object, which includes any item, device, instrument, substance or part of the body, inside the anus or vagina of another person; or
    - (2) The unlawful placement of the genitalia or any sexual device inside the mouth of another person.

## Sources & Authority

### 14 V.I. Code § 667

### ***Practice Note***

Title 14 V.I.C. § 667(b) provides:

#### **§ 667. Sexual relations with a detainee**

(b) For the purpose of subsection (a), “sexual intercourse” means:

(1) Any act of physical union of the genitalia or anus of one person with the mouth, anus or genitalia of another person. It occurs upon any penetration, however slight. Ejaculation is not required; or

(2) Any act of cunnilingus or fellatio regardless of whether penetration occurs, Ejaculation is not required.

(A) “Cunnilingus” means any oral contact with the female genitalia.

(B) “Fellatio” means any oral contact with the male genitalia.

(c) For the purpose of subsection (a), “sexual penetration” means:

(1) The unlawful placement of an object, which includes any item, device, instrument, substance or part of the body, inside the anus or vagina of another person; or

(2) The unlawful placement of the genitalia or any sexual device inside the mouth of another person.

**Note:** It is recommended that the relevant portion(s) of the statutory list found Title 14 V.I.C. § 667(b) be selected to match the facts to be presented by the evidence in any individual case, to avoid confusing the jury with references to substances not involved in the matter before them.

**ALERT:** It will be apparent from close reading of the statute governing this offense that § 667(a) refers to the crime of engaging in “sexual relations” while the definition in subsection (b) of that same statute deals with the term “sexual intercourse.” To avoid confusing the jury, the obvious legislative intention to have the definition in (b) explain the defined elements of the offense proscribed in (a) has led to use of the term “sexual relations” in the definitional instruction, so that it matches the statement of the crime in these Instructions.

## Chapter 24. EXTORTION AND THREATS 14 V.I.C. §§ 701 – 707

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### 24.01 Extortion -- Definition

“Extortion” means obtaining of property from another person, with his consent, induced by a wrongful use of force or fear, or under color of official right.

#### Sources & Authority

14 V.I. Code § 701

### 24.03 Obtaining a Signature by Threats

The defendant is charged with the crime of obtaining a signature by threats. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant obtained from *<name of victim>* (his; her) signature on a [paper; written instrument]; and

(2) The signature, if freely given, would have [transferred any property; created a debt; created a demand; created a charge; created a right of action]; and

(3) Defendant used extortionate means to obtain the signature.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 702

#### ***Practice Note***

The text of 14 V.I.C. § 7021 provides as follows:

##### **§ 702. Obtaining signature by threats**

Whoever, by extortionate means, obtains from another his signature to any paper or instrument, which signature if freely given, would have transferred any property, or created debt, demand, charge, or right of action, shall be punished in the same manner as if the actual delivery of such debt, demand, charge, or right of action were obtained.

## **24.05 Oppression**

The defendant is charged with the crime of oppression. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant [was a public officer; pretended to be a public officer]; and

(2) Defendant acted under the pretense or color of any process or other legal authority; and

(3) Defendant [arrested any person; detained a person against (his; her) will; seized or levied upon any property; dispossessed anyone of any lands or property; did an act injuring a person or (his; her) property or rights]; and

(4) Defendant acted without a regular process or other lawful authority.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.



**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**14 V.I. Code § 703**

### ***Practice Note***

Title 14 V.I.C. § 703 provides:

#### **§ 703. Oppression**

Whoever, being a public officer, or person pretending to be a public officer, and under the pretense or color of any process or other legal authority—

- (1) arrests any person or detains him against his will;
- (2) seizes or levies upon any property;
- (3) dispossesses any one of any lands or property; or
- (4) does any other act, whereby another person is

injured in his person, property or rights

—without a regular process or other lawful authority therefor, commits oppression and shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

Decades ago Virgin Islands courts held that oppression could be defined as the exercise of authority or power in a burdensome, cruel or unjust manner. *Gov't of the V.I. v. Lenhardt*, 7 V.I. 406 (V.I. Mun. Ct. 1969) (“impudent” behavior during a traffic stop did not warrant display of a weapon by an officer).

In one classic case reviewed by the Third Circuit, the conduct of a police officer who detained a suspect, used threats of prosecution and a consequent prison term and substantial fines, and displayed a gun to coerce the suspect into having sexual intercourse with him constituted an “act” within the meaning of paragraph (4) of this section. *Gov't of Virgin Islands v. Derricks*, 810 F.2d 50 (Nd Cir. 1987).

## 24.07 Blackmail

The defendant is charged with the crime of blackmail. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant sent or delivered to *<name of victim>* any [letter; writing], whether signed or not, [expressing; implying; calculated to imply] any threat; and

(2) Defendant acted with the intent to extort [money; property] from *<name of victim>*.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 704

### ***Practice Note***

Title 14 V.I.C. § 704 provides:

#### **§ 704. Blackmail**

Whoever, with intent to extort any money or other property from another, sends or delivers to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply any threat, shall be imprisoned not more than 5 years.

## 24.09 Threatening Letters

The defendant is charged with the crime of sending threatening letters. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant [sent; delivered] to *<name of victim>* any [letter; writing], whether signed or not, threatening to [accuse (him; her) of a crime;

accuse another person of a crime; expose or publish any of (his; her) failings or infirmities]; and

**(2) Defendant acted knowingly (meaning knew what (he; she) was doing, not necessarily knowing it was illegal) and willfully (meaning on purpose or willingly), and maliciously (meaning intentionally and without just cause or excuse, consciously violating the law).**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 705

#### ***Practice Note***

Title 14 V.I.C. § 705 provides:

#### **§ 705. Threatening letters**

Whoever knowingly, willfully and maliciously sends or delivers to another any letter or writing, whether subscribed or not, threatening to accuse him or another of a crime, or to expose or publish any of his failings or infirmities, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

### **24.11 Harassment by Telephone or Written Communication**

The defendant is charged with the crime of harassment by [telephone; written communication]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant**

*\* Select element(s) charged in this case \**

... communicated with <name of victim>, anonymously or otherwise, by [telephone; mail; <name of other form of written communication>], in a manner likely to harass or alarm;

... made a telephone call to *<name of victim>*, whether or not a conversation ensued, with no purpose of legitimate communication;

and

**(2) Defendant had the intent to harass or alarm *<name of victim>*.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 706**

### ***Practice Note***

Title 14 V.I.C. § 706 provides:

**§ 706. Harassment by telephone, telegraph, or written communication**

Whoever, with intent to harass or alarm another person—

(1) communicates with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to harass or alarm; or

(2) makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication, is guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned for not more than 1 year, or both.

## **24.13 Intimidation**

**The defendant is charged with the crime of intimidation. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant violated the Virgin Islands statute prohibiting *<name of offense proscribed by 14 V.I.C. §§ 252, 253, 254, 295, 296, 297, 298, 621, 622, 623, 624, 705, 706, 922, 923, 924, 1265, 1265a, 1267, 1341, 1700, 1701, 1702, 1703, 1708 or 1709>*; and**

**(2) Defendant acted by reason of the actual or perceived** [race; religion; color; place of birth; sex; ethnicity; handicap; <specify any combination of the foregoing factors>] **of another** [individual; group of individuals].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 707**

### ***Practice Note***

Title 14 V.I.C. § 707 provides:

#### **§ 707. Intimidation**

(a) Whoever, by reason of the actual or perceived race, religion, color, place of birth, sex or ethnicity or handicap of another individual or group of individuals violates sections 252, 253, 254, 295, 296, 297, 298, 621, 622, 623, 624, 705, 706, 922, 923, 924, 1265, 1265a, 1267, 1341, 1700, 1701, 1702, 1703, 1708 and 1709 of this title shall be guilty of a felony.

(b) Notwithstanding any other provision of law, the parent(s) or legal guardian(s) of any unemancipated minor shall be liable for any judgment rendered against such minor in any civil action irrespective of any criminal prosecution or the result thereof under this section.

**Underlying Offense.** It is assumed that the court will give the jury instructions separately for the elements of each underlying offense of which the defendant is charged. Instruction 24.13 thus simply addresses the add-on crime of Intimidation in the perpetration of such underlying offense(s).

**Parental Liability.** Subsection (b) of this statute provides that -- notwithstanding any other provision of law, “the parent(s) or legal guardian(s) of any unemancipated minor shall be liable for any judgment rendered against such minor in any civil action irrespective of any criminal prosecution or the result thereof under this section.”

## Chapter 25. FALSE PERSONATION 14 V.I.C. § 741 - 743

25.01	Impersonating a Law Enforcement Officer .....	302
25.03	Acting in Assumed Character .....	303
25.05	Impersonating Another to Receive Money or Property .....	304
25.07	Falsifying Drivers Licenses or Identification Cards .....	305

### **25.01 Impersonating a Law Enforcement Officer**

The defendant is charged with the crime of impersonating a law enforcement officer. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant – directly or indirectly – represented himself [as; to be] a law enforcement officer; and

(2) That this conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 741

#### ***Practice Note***

The text of 14 V.I.C. § 741 provides as follows:

#### **§ 741. Impersonation of law enforcement officer**

Whoever directly or indirectly represents himself as a law enforcement officer, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

### **25.03 Acting in Assumed Character**

The defendant is charged with the crime of impersonating another person. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant [impersonated; assumed the character of] another person; and

(2) Defendant did any act

*\* Select element(s) charged in this case \**

... that if it were done by the individual impersonated might result in (his; her) liability [to any suit or prosecution; to pay any sum of money; to incur any charge, forfeiture or penalty;

... whereby any benefit might accrue to [the party impersonating; any other person].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 742

#### ***Practice Note***

Title 14 V.I.C. § 742 provides:

##### **§ § 742. Acting in assumed character**

Whoever impersonates another and in such assumed character does any act—

(1) which, if it were done by the individual impersonated, might result in his liability—

(A) to any suit or prosecution;

(B) to pay any sum of money; or

(C) to incur any charge, forfeiture or penalty; or

(2) whereby any benefit might accrue to the party impersonating, or to any other person; or

Whoever impersonates another and receives any money or property, knowing that it is intended to be delivered to the individual impersonated, with intent to convert the same to his own use, or to that of another person, or to deprive the owner thereof— shall be fined not more than \$1,000 or imprisoned not more than 2 years, or both.

**Example Well-Known Case.** Defendant’s signing a neighbor's name to documents at a veterinary clinic supported convictions for forgery and assuming the character of another. Clinic witnesses identified defendant as the person who used the neighbor's name, and the driver's license number on a money order form defendant used to pay the bill matched the one on defendant's license. *Latalladi v. People*, 51 V.I. 137 (V.I. 2009).

## **25.05 Impersonating Another to Receive Money or Property**

The defendant is charged with the crime of impersonating another person to receive money or property. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant [impersonated; assumed the character of] **another person**; and

(2) Defendant received [money; property], knowing that it was intended to be delivered to the individual impersonated; and

(3) Defendant intended to

*\* Select element(s) charged in this case \**

... **convert the** [money; property] **to** [(his; her) own use; to the use of another person];

... **deprive the rightful owner of such** [money; property] **the use thereof.**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 742



## ***Practice Note***

Title 14 V.I.C. § 742 provides:

### **§ § 742. Acting in assumed character**

Whoever impersonates another and in such assumed character does any act—

(1) which, if it were done by the individual impersonated, might result in his liability—

(A) to any suit or prosecution;

(B) to pay any sum of money; or

(C) to incur any charge, forfeiture or penalty; or

(2) whereby any benefit might accrue to the party impersonating, or to any other person; or

Whoever impersonates another and receives any money or property, knowing that it is intended to be delivered to the individual impersonated, with intent to convert the same to his own use, or to that of another person, or to deprive the owner thereof—

shall be fined not more than \$1,000 or imprisoned not more than 2 years, or both.

## **25.07 Falsifying Drivers Licenses or Identification Cards**

**The defendant is charged with the crime of falsifying** [a driver's license; an identification card]. **The People must prove beyond a reasonable doubt each of the following elements of that crime:**

### **(1) The defendant**

*\* Select element(s) charged in this case \**

- ... made a [driver's license; identification card] without legal authority or right;
- ... [obtained; possessed] a [driver's license; identification card] that has been made by a person who has no legal authority or right to make the [driver's license; identification card];
- ... used a [false; fictitious] name on any portion of any application for a [driver's license; identification card];
- ... [knowingly made a false statement on; knowingly concealed a material fact on; fraudulently completed any portion of] any application for a [driver's license; identification card];

... [obtained; possessed] a [driver's license; identification card] upon which the [date of birth; name] has been altered for the purpose of displaying information other than the person's true [name; age];

**and**

**(2) That the defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 743**

### ***Practice Note***

Title 14 V.I.C. § 743 provides:

**§ § 743. Falsifying driver's licenses or identification cards**

(a) It is unlawful for any person to:

(1) Make a driver's license or identification card if the person has no legal authority or right to make the license or identification card;

(2) Obtain or possess a driver's license or identification card that has been made by a person who has no legal authority or right to make the license or identification card;

(3) Use a false or fictitious name, or knowingly make a false statement, or knowingly conceal a material fact, or otherwise fraudulently complete any portion of any application for a driver's license or identification card; or

(4) Obtain or possess a driver's license or identification card upon which the date of birth or name has been altered for the purpose of displaying information other than the person's true name and age.

(b) Any person who violates subsection (a) of this section is guilty of a misdemeanor, and shall be fined not more than \$500 or imprisoned not more than 6 months, or both.

(c) Nothing in this section prohibits a person from possessing or displaying another person's driver's license or identification card for a lawful purpose.

## Chapter 26. FORGERY & COUNTERFEITING 14 V.I.C. § 791 – 795

26.01	Forgery .....	307
26.03	Passing or Possessing Forged Bills or Notes .....	311
26.05	Possessing Blank or Unfinished Bank Notes or Bills .....	312
26.07	Making or Passing Fictitious Bills or Notes .....	313
26.09	Sending or Delivering False Messages .....	314
26.09	Filing or Recording a Forged Instrument .....	315

### 26.01 Forgery

The defendant is charged with the crime of forgery. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant

*\* Select element(s) charged in this case \**

● **falsely made, altered, forged or counterfeited any**

... charter; articles or certificate of incorporation; letters patent; deed; lease; indenture; obligation; will; testament; codicil; annuity; bond; covenant; bank bill; bank note; post-note; check; bank draft; bill of exchange; contract; promissory note;

... [due bill for the payment of; receipt for] [money; property];

... [passage ticket; power of attorney; certificate of any [share; right; interest] in the stock of any [corporation; association]; warrant for the payment of money from the treasury; [warrant; request] for [the payment of money; the delivery of goods or chattels of any kind; [warrant; request] for the delivery of any instrument of writing, acquittance, release or receipt for money or goods;

... acquittance, release or discharge for any [debt; account; suit; action; demand; *<name of other similar thing>*], real or personal; any transfer or assurance of [money; certificates of shares of stock; goods; chattels; other property];

... letter of attorney; power to [receive money; receive or transfer certificates of shares of stock or annuities; power to [let; lease; dispose of; alien; convey] any [goods; chattels; lands; tenements; other estate, real or personal];

- ... [acceptance; indorsement] of any [bill of exchange; promissory note; draft; order; assignment] of any [bonds; obligation; promissory note] for [money; other property];
  - ... [seal; handwriting] of another;
  - **uttered, published, passed or attempted to pass as true and genuine, any** *<name of one or more false, altered, forged or counterfeited matters or items specified and described above>*, **knowing the same to be false, altered, forged or counterfeited;**
  - **altered, corrupted or falsified any record of**
    - ... any [will; codicil; conveyance; *<name of other instrument>*], the record of which is by law evidence;
    - ... any [judgment of a court; return of any officer to any process of any court];
  - **made, forged or altered any**
    - ... entry in any [books; records];
    - ... instrument purporting to be any *<name of record or return specified and described above>*;
  - **forged or counterfeited a seal of** [the Government; any public officer authorized by law; any court of record; any corporation; any authorized public body; any State, government, or country]; or any impression purporting to be an impression of any such seal; or
  - **had in (his; her) possession any counterfeit seal of** *<name type of seal specified and described above>* **or impression thereof, knowing it to be counterfeit, and willfully concealed the same;**
- and

(2) Defendant acted with intent to defraud another.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 791

### ***Practice Note***

The text of 14 V.I.C. § 791 provides as follows:

## § 791. Forgery

Whoever, with intent to defraud another—

(1) falsely makes, alters, forges, or counterfeits any charter, articles or certificate of incorporation, letters patent, deed, lease, indenture, obligation, will, testament, codicil, annuity, bond, covenant, bankbill or note, post-note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney; or any certificate of any share, right or interest in the stock of any corporation or association; or any warrant for the payment of money from the treasury, warrant or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, acquittance, release or receipt for money or goods; or any acquittance, release or discharge for any debt, account, suit, action, demand, or other thing, real or personal; or any transfer or assurance of money, certificates of shares of stock, goods, chattels, or other property whatever; or any letter of attorney or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands or tenements, or other estate, real or personal; or any acceptance or indorsement of any bill of exchange, promissory note, draft, order or assignment, of any bonds, obligation, or promissory note for money or other property; or the seal or handwriting of another;

(2) utters, publishes, passes, or attempts to pass, as true and genuine, any of the false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited;

(3) alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence; or any record of any judgment of a court or the return of any officer to any process of any court;

(4) makes, forges, or alters any entry in any books or records; or any instrument purporting to be any record or return specified in the subdivisions (1)–(3) of this section;

(5) forges or counterfeits the Government seal, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation; or any other public seal authorized or recognized by law, or the seal of any State, government, or country; or any impression purporting to be an impression of any such seal; or

(6) has in his possession any such counterfeit seal, or impression thereof, knowing it to be counterfeit, and willfully conceals the same—

shall be fined not more than \$2,000 or imprisoned not more than 10 years, or both.

**Bad Checks.** It was held by the Third Circuit half a century ago that – to establish a violation of forgery statute – the government must prove that defendant passed forged checks with knowledge of their falsity and intended to defraud another person. *Government of Virgin Islands v. Venzen*, 424 F.2d 521 (3d Cir. 1970).

**Forged Assurance.** In a well-known case, the Supreme Court of the Virgin Islands held that there was sufficient evidence that defendant, the acting administrator of the Government Employees' Retirement System, was guilty of submitting a forged assurance or obligation of money and of defrauding the System by submitting a falsified proposed budget showing a chief financial officer position as “vacant” when the full salary of that position was being paid to defendant as an unauthorized extra salary and when there was testimony that a position for which a salary was being paid was not normally listed as being vacant. *Todmann v. People*, 59 V.I. 926 (V.I. 2013).

**False Documents.** In another well-known landmark decision, where the defendant was accused of signing a neighbor's name to documents at a veterinary clinic, the evidence supported conviction for forgery, where a driver's license number on the money order form defendant used to pay the bill matched the one on defendant's license, and the jury was able to compare the signatures on the money order and the clinic forms and determine that they were made by the same person. *Latalladi v. People*, 51 V.I. 137 (V.I. 2009).

**Possession of Forged Check by the Defendant.** Shortly after the turn of the century, the federal district court found the evidence insufficient to convict a defendant of forgery under 14 V.I.C. § 791(1), even though the victim and her husband both testified they did not endorse a retirement check nor authorized anyone else to do so, where there was no evidence establishing that defendant ever had possession of the check or that he or another person directed by him presented the check to a meat market to be cashed. Thus there was no evidence linking defendant to the forged instrument to permit a reasonable inference that he committed the forgery. *Ibrahim v. Virgin Islands*, 47 V.I. 589 (D.V.I. 2005).

**Handwriting Proof.** In a prominent case the Supreme Court decision a decade ago, it was held that the People were not required to prove under 14 V.I.C. § 791(2) that defendant himself forged a particular document, and thus there was no obligation to receive expert proof on the defendant's handwriting. *People v. Todmann*, 2010 V.I. Supreme LEXIS 12 (VI. Feb. 19, 2010).

### **26.03 Passing or Possessing Forged Bills or Notes**

The defendant is charged with the crime of [passing; possessing] forged [bills; notes]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant [had in his possession; received from another person] any [forged; counterfeited] [promissory note; bank bill; bill for payment of money or property]; and

(2) Defendant intended to

*\* Select element(s) charged in this case \**

... pass or utter such [promissory note; bank bill; bill for payment of money or property];

... permit, cause or procure such [promissory note; bank bill; bill for payment of money or property] to be passed or uttered;

and

(3) Defendant intended to defraud any person, knowing such [promissory note; bank bill; bill for payment of money or property] to be [forged; counterfeited].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 792

#### ***Practice Note***

Title 14 V.I.C. § 792(1) provides:

#### **§§ 792. Passing forged bills or notes; possession of; penalty**

Whoever—

(1) has in his possession or receives from another person any forged promissory note or bankbill, or bills for payment of money or property, with the intention to pass the same or to permit, cause,

or procure the same to be uttered or passed in order to defraud any person, knowing the same to be forged or counterfeited;

## **26.05 Possessing Blank or Unfinished Bank Notes or Bills**

The defendant is charged with the crime of possessing [blank; unfinished] bank [notes; bills]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant [had; kept] in (his; her) possession any [blank; unfinished] bank [note; bill] made in the form or similitude of any [promissory note; bill] for payment of [money; property] made to be issued by any [incorporated bank; banking company]; and**

**(2) Defendant intended to**

*\* Select element(s) charged in this case \**

... fill in and complete such [blank; unfinished] bank [note; bill];

... permit, cause or procure such [blank; unfinished] bank [note; bill] to be filled in and completed;

**and**

**(3) Defendant intended to**

*\* Select element(s) charged in this case \**

... utter or pass the bank [note; bill];

... permit, cause or procure the bank [note; bill] to [be uttered; be passed; defraud any person].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 792**



## ***Practice Note***

Title 14 V.I.C. § 792(2) provides:

### **§§ 792. Passing forged bills or notes; possession of; penalty**

Whoever— \* \* \* \*

(2) has or keeps in his possession any blank or unfinished note or bank bill made in the form or similitude of any promissory note or bill for payment of money or property made to be issued by any incorporated bank or banking company with intention to fill and complete such blank and unfinished note or bill, or to permit or cause, or procure the same to be filled up and completed, in order to utter or pass the same, or to permit or cause, or procure the same to be uttered or passed, or to defraud any person— shall be fined not more than \$2,000 or imprisoned not more than 10 years, or both.

## **26.07 Making or Passing Fictitious Bills or Notes**

The defendant is charged with the crime of [making; passing] fictitious [bills; notes]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant [made; uttered; passed; published; attempted to utter, pass or publish], any fictitious [bill; note; check; *<name of other written instrument>*] for the payment of [money; property] of some [bank; corporation; partnership; individual] when, in fact, there is no such [bank; corporation; partnership; individual] in existence; and

(2) Defendant knew that such [bill; note; check; *<name of other written instrument>*] was fictitious; and

(3) Defendant intended to defraud another person.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

## **Sources & Authority**

14 V.I. Code § 793

## ***Practice Note***

Title 14 V.I.C. § 793 provides:

### **§ 793. Making and passing fictitious bills and notes**

Whoever, with intent to defraud another person, makes, utters, passes, or publishes, or attempts to utter, pass or publish, any fictitious bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, partnership, or individual when, in fact, there is no such bank, corporation, partnership, or individual in existence, knowing the bill, note, check, or instrument in writing to be fictitious, shall be fined not more than \$2,000 or imprisoned not more than 10 years, or both.

## **26.09 Sending or Delivering False or Forged Message**

The defendant is charged with the crime of [sending; delivering] a [false; forged] message. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant knowingly and willfully sent by [telegraph; radio; cable] a false or forged message, purporting to be from [such telegraph office; such radio office; such cable office; any other person]; and**

**(2) Defendant**

*\* Select element(s) charged in this case \**

... [willfully delivered; caused to be delivered] to any person any message falsely purporting to have been received by [telegraph; radio; cable];

... [furnished; conspired to furnish; caused to be furnished], to any [agent; operator; employee], to be sent by [telegraph; radio; cable], any message knowing the same to be [false; forged];

... [furnished; conspired to furnish; caused to be furnished], to any [agent; operator; employee] any such message to be delivered, knowing the same to be [false; forged];

**and**

**(3) Defendant had the intent to [deceive; injure; defraud] another person.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 794**

#### ***Practice Note***

Title 14 V.I.C. § 794 provides:

#### **§ 794. Sending or delivering false messages**

Whoever, with intent to deceive, injure or defraud another person—

(1) knowingly and willfully sends by telegraph, radio or cable a false or forged message, purporting to be from such telegraph, radio or cable office or from any other person;

(2) willfully delivers or causes to be delivered to any person any such message falsely purporting to have been received by telegraph, radio or cable; or

(3) furnishes or conspires to furnish, or causes to be furnished, to any agent, operator or employee, to be sent by telegraph, radio or cable, or to be delivered, any such message knowing the same to be false or forged—

shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

### **26.09 Filing or Recording a False or Forged Instrument**

**The defendant is charged with the crime of [filing; recording] a forged instrument. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant [procured; offered] any [false; forged] instrument to be [filed; registered; recorded] in any public office within the Virgin Islands, which instrument if genuine, might be [filed; registered; recorded] under [the laws of**

the Virgin Islands; the laws of the United States applicable to the Virgin Islands];  
and

**(2) Defendant acted knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 795**

#### ***Practice Note***

Title 14 V.I.C. § 795 provides:

##### **§ 795. Filing or recording forged instruments**

Whoever knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within the Virgin Islands, which instrument if genuine, might be filed, registered or recorded under the laws of the Virgin Islands or under the laws of the United States applicable to the Virgin Islands, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

**Constitutionality.** The Supreme Court has held that 14 V.I.C. § 795 is not unconstitutionally vague in violation of due process, since it provides unambiguous standards specifying what actions an individual must take to be criminally liable for procuring false instruments; thus it does not foster arbitrary and discriminatory enforcement. *Mendoza v. People*, 55 V.I. 660 (V.I. 2011).

**Filing Itself Not Essential.** In one modern case the Supreme Court held that 14 V.I.C. § 795 does not require that the charged false or forged instruments actually be presented for filing. The statute also prohibits knowing procurement of such instrument, or an offer to have a false or forged instrument filed. *DeSilvia v. People*, 55 V.I. 859 (V.I. 2011); *Mendoza v. People*. 55 V.I. 660 (V.I. 2011).

**Example.** In another case, falsification of documents before they were filed with the Bureau of Motor Vehicles constituted filing a false instrument under § 795. *Mendoza v. People*, 55 V.I. 660 (V.I. 2011).

## Chapter 27. FRAUD, FALSE STATEMENTS & BAD CHECKS 14 V.I.C. § 831-52

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### **27.01 Conveyance or Concealment of Property in Fraud of Creditors**

The defendant is charged with the crime of [conveyance; concealment] of property in fraud of creditors. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant

*\* Select element(s) charged in this case \**

... fraudulently removed (his; her) [property; effects] beyond the jurisdiction of the courts;

... fraudulently [sold; conveyed; assigned; concealed] (his; her) property;

... having [an action pending; a judgment rendered] against (him; her) for the recovery of any personal property, fraudulently [concealed; sold; disposed of] such property;

... having [an action pending; a judgment rendered] against (him; her) for the recovery of any personal property, removed such property beyond the jurisdiction of the courts in which it may be at the time of [the commencement of such action; the rendering of such judgment];

**and**

**(2) Defendant acted with the intent to defraud, hinder or delay (his; her) creditors of their rights, claims or demands.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 832**

#### ***Practice Note***

The text of 14 V.I.C. § 732 provides as follows:

**§ 832. Conveyance or concealment of property in fraud of creditors**

Whoever—

(1) fraudulently removes his property or effects beyond the jurisdiction of the courts or fraudulently sells, conveys, assigns, or conceals his property, with intent to defraud, hinder, or delay his creditors of their rights, claims, or demands; or

(2) having an action pending against him or a judgment for the recovery of any personal property rendered against him, fraudulently conceals, sells, or disposes of such property with intent to hinder, delay or defraud the person bringing such action or recovering such judgment, or with such intent removes such property beyond the jurisdiction of the courts in which it may be at the time of the commencement of such action or the rendering of such judgment—

shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

### **27.03 Participating in Fraud on Creditors**

The defendant is charged with the crime of participating in fraud on creditors. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) Defendant was a party to**

*\* Select element(s) charged in this case \**

- ... [any fraudulent conveyance of any property, real or personal; any right or interest issuing out of any fraudulent conveyance of any property, real or personal];
- ... any [bond; suit; judgment; execution; contract; conveyance] [had; made; contrived], with intent to deceive and defraud others;
- ... any [bond; suit; judgment; execution; contract; conveyance] [had; made; contrived], to [defeat; hinder; delay] [creditors; others] of their just [debts; damages; demands];
- ... wittingly and willingly [putting in; using; avowing; maintaining; justifying; defending] any *<name of any thing or act described in options 1A, 1B, or 1C above>*, as [true; done; had; made] [in good faith; upon good consideration];
- ... [aliens; assigns; sells] any [part] of [the property, real or personal; *<name of any thing or act described in options 1A, 1B, or 1C above>*], conveyed to (him; her);

**and**

**(2) Defendant's conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

14 V.I. Code § 833

## ***Practice Note***

Title 14 V.I.C. § 833 provides:

### **§ 833. Participating in frauds on creditors**

Whoever—

(1) is a party to any fraudulent conveyance of any property, real or personal, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract or conveyance, had, made or contrived, with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or

(2) being a party as aforesaid, at any time wittingly and willingly puts in, uses, avows, maintains, justifies or defends the same, or any of them, as true, done, had, or made in good faith, or upon good consideration, or aliens, assigns, or sells any of the property, real or personal, or other things before mentioned, conveyed to him as aforesaid, or any part thereof—

shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

## **27.05 Obtaining Money or Property by False Pretenses**

The defendant is charged with the crime of obtaining [money; property] by false pretenses. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant defrauded *<name of victim>* of [money; property] by [false; fraudulent] [representation; pretenses]; and

(2) Defendant acted knowingly and designedly.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

## **Sources & Authority**

14 V.I. Code § 834



## ***Practice Note***

Title 14 V.I.C. § 834 provides:

### **§ 834. Obtaining money by false pretense**

Whoever knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, shall—

(1) if such property or money was less than \$100 in value, be fined not more than \$200 or imprisoned not more than 1 year, or both; or

(2) if such property or money was \$100 or more in value, be imprisoned not more than 10 years.

**Evidence Limitation.** Under 14 V.I.C. § 844 in any trial for obtaining something of value by false pretense, “no evidence shall be admitted of a false pretense expressed orally and unaccompanied by a false token or writing; unless such pretense, or some note or memorandum thereof, is in writing, and either subscribed by or in the handwriting of the defendant. This section does not apply to an action for falsely representing or personating another, and in such assumed character receiving any such valuable thing.” However – since the Government of the Virgin Islands is not a “person” under 1 V.I.C. § 41 – the requirement of a false token or writing imposed by 14 V.I.C. § 844 is not applicable under 14 V.I.C. § 843(3). Accordingly, in a prosecution under § 843(3), the evidence against defendant was not rendered insufficient by the People's failure to introduce a false writing or token at trial. *Duggins v. People*, 56 V.I. 295 (V.I. 2012).

**Example Cases.** In one territorial court decision from the turn of this century, the evidence was held sufficient to support conviction for obtaining money by false pretenses where defendant, who was authorized to write checks for certain office expenses, wrote checks to herself and signed them with her employer's signature stamp. *People v. Carmichael*, 45 V.I. 33, 2002 V.I. LEXIS 27 (V.I. Terr. Ct. 2002), *aff'd*, 46 V.I. 391 (D.V.I. 2004). In another case, the defendant obtained money by false pretenses when he falsely represented himself to be a furniture salesman who would deliver goods on purchase, thereby inducing the victim to part with her money. *Ibrahim v. People*, 47 V.I. 589, 2005 U.S. Dist. LEXIS 28696 (D.V.I. 2005). In the well-known *Todmann* case there was sufficient evidence that defendant, the acting administrator of the Government Employees' Retirement System, had the requisite mens rea because there was a strong circumstantial inference to be drawn from the evidence presented at trial that he knowingly submitted a memorandum to payroll for processing, knowing its authorization to be false with the intent to defraud the System of an extra salary not authorized by the proper officials. However, the evidence was not sufficient to support a conviction for obtaining money by false pretenses by using a corporate credit card without the government employer's authorization, because there was no evidence of damages. The employer never paid any of the charges made on the card, and there was no testimony that it or others suffered any permanent loss or damage. *Todmann v. People*, 59 V.I. 926 (V.I. 2013).

**Defrauding.** The federal district court has held that – under 14 V.I.C. § 834(2) – a person “defrauds” another if he makes a misrepresentation of an existing material fact, knowing it to be false, intending one to rely and under circumstances in which such person does rely to his damage. The court indicated that the requirement that another person must have been defrauded imports the requirement that another conferred a benefit or turned over something of value to the actor in reliance on the misrepresentation; mere utterance of a false statement is insufficient. *People v. Adams-Tutein*, 47 V.I. 514 (D.V.I. 2005).

## **27.07 Drawing or Delivering Worthless Checks**

The defendant is charged with the crime of [drawing; delivering] **worthless checks**. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant [made; drew; uttered; delivered] a [check; draft; order] for the payment of money drawn on any [bank; depository]; and**

**(2) Defendant knew at the time of such [making; drawing; uttering; delivering] that the [maker; drawer] did not have sufficient [funds in; credit with], such [bank; depository] for the payment of such [check; draft; order], in full, upon its presentation.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

14 V.I. Code § 835

### ***Practice Note***

Title 14 V.I.C. § 835 provides:

#### **§ 835. Drawing and delivering worthless checks**

(a) Whoever makes, draws, utters, or delivers any check, draft or order for the payment of money—

(1) to the value of \$100 or more upon any bank or other depository knowing at the time of such making, drawing, uttering

or delivering that the maker or drawer has not sufficient funds in, or credit with, such bank or other depository for the payment of such check, draft or order, in full, upon its presentation, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both;

(2) to the value of less than \$100, upon any bank or other depository knowing at the time of such making, drawing, uttering or delivering that the maker or drawer has not sufficient funds in, or credit with, such bank or other depository for the payment of such check, draft or order, in full, upon its presentation, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

(b) The making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence of the maker's or drawer's knowledge of insufficient funds in, or credit with, such bank or other depository, if such maker or drawer has not paid the drawee thereof the amount due thereon, together with all costs and protest fees, within 10 days after receiving notice that such check, draft or order has not been paid by the drawee.

(c) "Credit", as used in this section, means an arrangement or understanding with the bank or depository for the payment of such check, draft or order.

## **27.09 Drawing or Delivering Worthless Checks -- Knowledge**

**In connection with the crime drawing or delivering worthless checks you may consider the making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, to be some evidence of the maker's or drawer's knowledge of insufficient funds in, or credit with, such bank or other depository, if such maker or drawer has not paid the drawee thereof the amount due thereon, together with all costs and protest fees, within 10 days after receiving notice that such check, draft or order has not been paid by the drawee.**

### **Sources & Authority**

**14 V.I. Code § 835(b)**

## ***Practice Note***

Title 14 V.I.C. § 835(b) provides:

### **§ 835. Drawing and delivering worthless checks \* \* \* \***

(b) The making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence of the maker's or drawer's knowledge of insufficient funds in, or credit with, such bank or other depository, if such maker or drawer has not paid the drawee thereof the amount due thereon, together with all costs and protest fees, within 10 days after receiving notice that such check, draft or order has not been paid by the drawee.

## **27.09 Production of Fraudulent Heir**

The defendant is charged with the crime of production of a fraudulent heir. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant fraudulently produced an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit; and**
- (2) Defendant intended to thereby intercept the inheritance.**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

## **Sources & Authority**

14 V.I. Code § 836

## ***Practice Note***

Title 14 V.I.C. § 836 provides:

### **§ 836. Production of fraudulent heir**

Whoever fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit, with intent to intercept the inheritance, shall be imprisoned not more than 10 years.

## **27.11 Reselling Sold Property**

The defendant is charged with the crime of reselling sold property. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant, after once**

*\* Select element(s) charged in this case \**

... [selling; bartering; disposing of] [any property, real or personal; any interest in any property, real or personal];

... executing any [bond; agreement] for the sale of any property, real or personal;

**and**

**(2) Defendant again**

*\* Select element(s) charged in this case \**

... [sold; bartered; disposed of] the same property, or any part thereof, or interest therein **to any other person for a valuable consideration;**

... executed any [bond; agreement] to [sell; barter; dispose of]; the same property, or any part thereof, or interest therein; **to any other person for a valuable consideration;**

**and**

**(3) Defendant acted willfully and with intent to defraud previous or subsequent purchasers; and**

**(4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 837**

## ***Practice Note***

Title 14 V.I.C. § 837 provides:

### **§ § 837. Reselling sold property**

Whoever, after once selling, bartering, or disposing of any property, real or personal, or any interest therein, or after executing any bond or agreement for the sale of such property, again willfully and with intent to defraud previous or subsequent purchasers—

(1) sells, barter, or disposes of the same property, or any part thereof, or interest therein; or

(2) executes any bond or agreement to sell, barter, or dispose of the same property, or any part thereof, or interest therein— to any other person for a valuable consideration, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

### **27.13 Misrepresenting Competency to Sell or Mortgage Real Property by Married Person**

The defendant is charged with the crime of misrepresenting competency to sell or mortgage real property as a married person. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant was married; and**

**(2) Defendant falsely and fraudulently represented (himself; herself) as competent to [sell; mortgage] any real estate when the validity of such [sale; mortgage] required assent or concurrence of (his wife; her husband) to be valid; and**

**(3) Under such representation, defendant willfully [conveyed; mortgaged] the property.**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

## Sources & Authority

14 V.I. Code § 838

### ***Practice Note***

Title 14 V.I.C. § 838 provides:

**§ 838. Misrepresentation of competency by a married person**

Whoever, being married, falsely and fraudulently represents himself or herself as competent to sell or mortgage any real estate to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representation, willfully conveys or mortgages the same, shall be imprisoned not more than 10 years.

### **27.15 Defrauding Pledges**

The defendant is charged with the crime of defrauding pledges. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant had pledged [real; personal] property for a loan or other security; and**

**(2) Thereafter, during the existence of said pledge, the defendant or (his; her) representatives or assigns,**

*\* Select element(s) charged in this case \**

... [transferred; sold; took; drove; carried away; disposed of]; said property, or any part thereof, without the written consent of the pledgee;

... permitted the [transferring; selling; taking; carrying away; disposal of] said property, or any part thereof, without the written consent of the pledgee;  
**and**

**(3) Defendant acted with intent to defraud the pledgee; and**

**(4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 840**

### ***Practice Note***

Title 14 V.I.C. § 840 provides:

#### **§ 840. Defrauding pledgees**

Whoever, after pledging as security any real or personal property whatever, for a loan or other security, during the existence of said pledge, with the intent to defraud the pledgee, his representatives or assigns, transfers, sells, takes, drives or carries away or otherwise disposes of or permits the transferring, selling, taking or carrying away or other disposal of said property, or any part thereof, without the written consent of the pledgee, shall—

- (1) if the property pledged was less than \$100 in value, be fined not more than \$200 or imprisoned not more than 1 year, or both; or
- (2) if the property pledged was \$100 or more in value, be imprisoned not more than 10 years.

### **27.17 Fraudulent Burning of Insured Property**

**The defendant is charged with the crime of fraudulent burning of insured property. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That on or about <date> in [this judicial division; <name of judicial division>] the defendant [burned; in any manner injured or destroyed] any property; and**
- (2) The property was at the time insured against loss or damage by fire, or by any other casualty; and**
- (3) Defendant acted willfully, meaning that (he; she) acted with a purpose or willingness to commit this act; and**
- (4) Defendant had the intent to defraud or prejudice the insurer; and**



(5) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 841; 1 V.I. Code § 41.

### ***Practice Note***

Title 14 V.I.C. § 841 provides:

#### **§ 841. Fraudulent burning of insured property**

Whoever willfully burns or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire, or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property or in possession of such person, or of any other, shall be fined not more than \$1,000 or imprisoned not more than 10 years, or both.

Note that 1 V.I.C. § 41 defines “willful” or “willfully,” when applied to the intent with which an act is done or omitted, as simply implying a purpose or willingness to commit the act, or make the omission referred to. This is the source of element (3) of this Instruction.

## **27.19 Fraudulent Insurance Claims**

The defendant is charged with the crime of making a fraudulent insurance claim. The People must prove beyond a reasonable doubt each of the following elements of that crime:

### **(1) The defendant**

*\* Select element(s) charged in this case \**

... submitted [a claim upon any contract of insurance for the payment of any loss; any proof in support of a claim upon any contract of insurance for the payment of any loss];

... [prepared; made; subscribed] any [account; certificate of survey; affidavit; proof of loss; book, paper, or writing], with intent to [present; use] the same in support of any claim upon any contract of insurance for the payment of any loss;

... [prepared; made; subscribed] any [account; certificate of survey; affidavit; proof of loss; book, paper, or writing], with the intent to allow it to be [presented; used] in support of any claim upon any contract of insurance for the payment of any loss;

**and**

**(2) Such claim was [false; fraudulent]; and**

**(3) That the defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 842**

#### ***Practice Note***

Title 14 V.I.C. § 842 provides:

#### **§ 842. Fraudulent insurance claims**

Whoever—

(1) presents any false or fraudulent claim, or any proof in support of such claim, upon any contract of insurance for the payment of any loss; or

(2) prepares, makes, or subscribes any account, certificate of survey, affidavit, or proof of loss, or other book, paper, or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim—

## **27.21 Fraudulent Claim Upon the Government**

The defendant is charged with the crime of making a fraudulent claim upon the government. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That in a matter within the jurisdiction of any [officer; department; board; commission; agency] of the government of the Virgin Islands, the defendant**

*\* Select element(s) charged in this case \**

... [made; presented] any claim [upon; against] [the government of; an officer of; a department of; a board of; a commission of; an agency of] the Virgin Islands, knowing such claim to be [false; fictitious; fraudulent];

... knowingly and willfully [falsified; concealed; covered up] by any [trick; scheme; device] a material fact;

... made any [false; fraudulent] [statements; representations];

... [made; used] any false [bill; receipt; voucher; roll; account; claim; certificate; affidavit; deposition] knowing the same to contain any [fraudulent; fictitious] [statement; entry];

**and**

**(2) Defendant acted knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and**

**(3) That the defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 843; 1 V.I. Code § 1**

### ***Practice Note***

Title 14 V.I.C. § 843 provides:

### § 843. Fraudulent claims upon the government

Whoever—

(1) makes or presents any claim upon or against the government of the Virgin Islands or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent;

(2) knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(3) makes any false or fraudulent statements or representations; or

(4) makes or uses any false bill, receipt, voucher, roll, account, claim, certificate, affidavit or deposition knowing the same to contain any fraudulent or fictitious statement or entry—

in any matter within the jurisdiction of any officer, department, board, commission, or other agency of the government of the Virgin Islands, shall be fined not more than \$500 or imprisoned not more than two years, or both.

**Mens Rea.** The argument that there is no “mens rea” requirement under 14 V.I.C. § 843(3) has been rejected. The statute is construed to require a mens rea of “knowing” conduct. Accordingly, the trial court made no error when it instructed the jury in accordance with that doctrine. *Duggins v. People*, 56 V.I. 295 (V.I. 2012). Title 1 V.I.C. § 41 supplies the knowing definition embodied in element (2) of this Instruction.

**Written Proof.** It has been held that – since the Government of the Virgin Islands is not a “person” under 1 V.I.C. § 41 – the requirement of a false token or writing imposed by 14 V.I.C. § 844 is not applicable in proceedings under 14 V.I.C. § 843(3). Thus the People's failure to introduce a false writing or token at trial of such a case is not a fatal defect in the case. *Duggins v. People*, 56 V.I. 295 (V.I. 2012).

**Example Cases. Falsification of documents submitted to** the Bureau of Motor Vehicles, falsely indicating that a vehicle had been physically inspected and was roadworthy, would constitute making a false representation upon the government under § 843(3) and filing a false instrument under §795. *Mendoza v. People*, 55 V.I. 660 (V.I. 2011).

**Materiality.** The Third Circuit held decades ago that the determination as to whether a misrepresentation involved a material fact is a question of law, rather than one of fact. *Gov't of the Virgin Islands v. Lee*, 775 F.2d 514 (3d Cir. 1985). However, it has been held that the issue of materiality in a 14 V.I.C. § 843 case must be submitted to the jury. *People v. Barton*, 47 V.I. 42 (V.I. Terr. Ct. 2004).

**Concealing a Material Fact.** For consideration of this issue in a complex factual situation involving a custody courts and proceedings in Florida courts, see *Barton v. People*, 46 V.I. 429(D.V.I. 2004), *aff'd*, 174 Fed. Appx. 110 (3d Cir. 2006).

**Statute of Limitations.** The V.I. Supreme Court has held that the Legislature did not intend for the exemption from the three year statute of limitations afforded to prosecutions for the falsification of public records in 5 V.I.C. § 3541 would apply to the offense of making a false statement under 14 V.I.C. § 843(3). Thus a prosecution for making a false or fraudulent representation to the government under §843(3) was time-barred by the three-year limitation period of §3541. *Miller v. People*, 54 V.I. 398 (V.I. 2010).

### **27.23 Issuing Receipt for Goods Not Received**

The defendant is charged with the crime of issuing a receipt for goods not received. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant was [a warehouseman; an officer, agent, or servant of a warehouseman]; and

(2) Defendant [issued; aided in issuing] a receipt, knowing that the goods for which such receipt is issued [have not been actually received by such warehouseman; are not under his actual control at the time of issuing such receipt].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 847

#### ***Practice Note***

Title 14 V.I.C. § 847 provides:

§ 847. Issue of receipt for goods not received

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

## **27.25 Issuing Receipt Containing False Statement**

The defendant is charged with the crime of issuing a receipt for goods containing a false statement. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant was [a warehouseman; an officer, agent or servant of a warehouseman]; and

(2) Defendant [fraudulently issued; aided in fraudulently issuing] a receipt for goods knowing that it contains any false statement.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 848

### ***Practice Note***

Title 14 V.I.C. § 848 provides:

#### **§ 848. Issue of receipt containing false statement**

A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

## **27.27 Issuing Duplicate Receipt Not So Marked**

The defendant is charged with the crime of issuing a duplicate receipt for goods not marked with the word “Duplicate.” The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant was [a warehouseman; an officer, agent, or servant of a warehouseman]; and

(2) Defendant [issued; aided in issuing] a [duplicate; additional] negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word “Duplicate.”

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 849

### ***Practice Note***

Title 14 V.I.C. § 849 provides:

#### **§ 849. Issue of duplicate receipts not so marked**

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word “Duplicate” except in the case of a lost or destroyed receipt after proceedings as provided for in section 7-402 of Title 11A, shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

## **27.29 Issuing Negotiable Receipt for Warehoused Goods Owned**

The defendant is charged with the crime of issuing a receipt for warehoused goods that are owned but not indicating that fact. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant was [a warehouseman; an officer, agent or servant of a warehouseman]; and

(2) Defendant knew that there were [deposited with; held by] a warehouseman goods of which he was an owner, either solely or jointly or in common with others; and

(3) Defendant [issued; aided in issuing] a negotiable receipt for such goods which does not state such ownership.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 850

### ***Practice Note***

Title 14 V.I.C. § 850 provides:

**§ 850. Issue for warehouseman's goods of receipts which do not state that fact**

Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.



### **27.31 Delivery of Goods Without Obtaining Negotiable Receipt**

The defendant is charged with the crime of delivering goods without obtaining a negotiable receipt. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant was [a warehouseman; an officer, agent, or servant of a warehouseman]; and

(2) Defendant delivered goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt [at; before] the time of such delivery.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 851

#### ***Practice Note***

Title 14 V.I.C. § 851 provides:

##### **§ 851. Delivery of goods without obtaining negotiable receipt**

A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 7-402 and 7-403 of Title 11A, be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

### **27.33 Negotiation of Receipt for Mortgaged Goods**

The defendant is charged with the crime of negotiating a receipt for mortgaged goods. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant deposited goods [to which he did not have title; upon which there is a lien or mortgage] and took a negotiable receipt for such goods; and

(2) Defendant afterwards negotiated the receipt for value with intent to deceive and without disclosing [(his; her) lack of title; the existence of the lien or mortgage].

(3) That the defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one of the elements of the above crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 852

#### ***Practice Note***

Title 14 V.I.C. § 852 provides:

##### **§ 852. Negotiation of receipt for mortgaged goods**

Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

## Chapter 28. GANG ACTIVITY 14 V.I.C. § 3060 - 3068

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### **28.01 Gang Crimes Definitions**

The following definitions apply in prosecutions for crimes under the Criminal Street Gang Prevention Act:

(a) “Act of violence” means those felony offenses described in title 23 Virgin Islands Code § 451(g) as crimes of violence.

(b) “Contraband” means any property, including money, that is owned by, in the possession of, or subject to the control of a criminal street gang member or associate and which is acquired by, derived from, or traceable to criminal street gang activities, or profits, proceeds or instrumentalities of criminal street gang activities, or all property used or intended or attempted to be used to facilitate the criminal street gang activities of any criminal street gang or criminal street gang member or associate, or all profits, proceeds, or instrumentalities of criminal street gang recruitment, or all property used or intended or attempted to be used to facilitate criminal street gang recruitment. Contraband does not include property of any person not a criminal street gang member or associate who does not knowingly or willingly permit the property to be used for the furtherance of criminal activities.

(c) “Criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal:

(1) which has as one of its primary objectives or activities the commission of one or more criminal activities;

**(2) which has an identifiable name or identifying sign or symbol or whose members wear identifiable and utilize distinct colors and patterns in wearing apparel; and**

**(3) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, two or more predicate criminal acts, at least one of which is an act of violence; provided such acts were not part of a common act or transaction.**

**(d) “Pattern of criminal gang activity” means the commission of, conspiracy to commit, or attempt to commit two or more of the following offences, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within one year after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:**

**(1) assault in the first, second, third degree and aggravated assault as defined in chapter 13 of this title;**

**(2) robbery of any degree as defined in chapter 93 of this title;**

**(3) murder in the first, or second degree or manslaughter, as defined in chapter 45 of this title;**

**(4) possession, sale, distribution, manufacturing or trafficking of controlled substances as prescribed in title 19 Virgin Islands Code;**

**(5) brandishing, exhibiting, or using a deadly weapon as defined in chapter 31 of this title;**

**(6) disturbing the peace as defined in chapter 31 of this title;**

**(7) reckless endangerment as defined in chapter 31 of this title;**

**(8) discharging or aiming firearms as defined in title 23, chapter 5;**

**(9) grand larceny as defined in chapter 55 of this title;**

**(10) burglary as defined in chapter 21 of this title;**

**(11) arson as defined in chapter 11 of this title;**

**(12) obstruction of justice as defined in chapter 75 of this title;**

**(13) rape as defined in chapter 85 of this title;**

**(14) kidnapping as defined in chapter 53 of this title;**

**(15) mayhem as defined in chapter 67 of this title;**

**(16) stalking as defined in chapter 104 of this title;**

**(17) receiving and possession of stolen property as defined in chapter 105 of this title;**

- (18) instigating or aiding a fight as defined in chapter 31 of this title;
- (19) identity theft as defined in chapter 110 of this title; or
- (20) theft of or unauthorized destruction of a vehicle as defined in chapter 69 of this title.

(e) “Criminal street gang member” means any person who knowingly becomes a member of a criminal street gang, and who participates in the criminal street gang with the specific intent of promoting, furthering or assisting the criminal interests of the criminal street gang.

(f) “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system, including, video, telephone communications, text messages, facsimile, electronic mail messages and instant message real-time communications with other individuals through the internet or other means, but does not include—

- (1) any wire or oral communication;
- (2) any communication made through a tone-only paging device;
- (3) any communication from a tracking device as defined in 18 U.S.C. § 3117; or
- (4) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(g) “Graffiti” means any form of unauthorized printing, writing, spraying, scratching, affixing, or inscribing on the property of another regardless of the content of nature of the material used in the commission of the act.

(h) “Government” means the Government of the Virgin Islands, any agency, autonomous or semi-autonomous agency, or instrumentality of the Government of the Virgin Islands.

(i) “Predicate criminal act” means:

- (1) an act of violence; or
- (2) any violation of title 14 Virgin Islands Code, sections 252, 253, 622, 623, 625, 707, 1081, 1083, 1382, 1383, 1501, 1507, 1508, 1510, or 1541; or
- (3) any violation of title 19 Virgin Islands Code, sections 608, 608a, 608b, 611, 614a, or 614b.

## **Sources & Authority**

14 V.I. Code § 3061

## ***Practice Note***

The Legislature of the Virgin Islands adopted The Criminal Street Gang Prevention Act in 2018, in Act No. 8033.

**Selecting Needed Definitions.** The definition provision of the Act, § 3061, is set forth in full in the Instruction above. It is recommended that only those definitions that apply in crimes as charged in the pending case be utilized with the jury, to avoid confusion over issues that they do not need to consider.

### **28.03 Organizing a Criminal Street Gang or Its Activities**

The defendant is charged with the crime of organizing a criminal street gang or its activities. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant [initiated; organized; planned; financed; directed; managed; supervised] [criminal street gang-related activities; a criminal street gang];

(2) Defendant acted knowingly and willfully; and

(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 3062(b)

## ***Practice Note***

The omnibus provisions of 14 V.I.C. § 3062, which state several distinct criminal offenses in the Street Gang Prevention Act, reads as follows:

(a) Any person who actively participates in or is a member of a criminal street gang, and who knowingly and willfully participates in any predicate criminal act committed for the benefit of, at the direction of, or in association with any criminal street gang, is guilty of a felony and shall be sentenced to not more than

ten years imprisonment or a fine of not more than \$50,000, or both such imprisonment and fine.

(b)

(1) It is unlawful for any person to knowingly and willfully initiate, organize, plan, finance, direct, manage, or supervise criminal street gang-related activities or a criminal street gang.

(2) A person who is found guilty of the conduct prohibited in paragraph (1) of this subsection is guilty of a felony and, upon conviction, shall be sentenced to a term of imprisonment for not more than ten years, or to payment of a fine of not more than \$100,000, or both imprisonment and a fine.

(c)

(1) Any criminal street gang member or associate who uses electronic communication to intimidate or harass any person for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang, including such activities as distributing, selling, transmitting, or posting on the internet any audio, video, or still image of criminal activities, is guilty of a felony and, upon conviction, shall be sentenced to a term of imprisonment of not more than five years, or to payment of a fine of not more than \$50,000, or to both imprisonment and a fine.

(2) Any person who uses electronic communication to advertise his presence in the community for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang, including such activities as distributing, selling, transmitting, or posting on the internet any audio, video, or still image of criminal activities, is guilty of a felony, and upon conviction shall be sentenced to a term of imprisonment of not more than two years, or to payment of a fine of not more than \$15,000, or to both imprisonment and a fine.

(d)

(1) Any person who knowingly and willfully causes, encourages, coerces, solicits, or recruits another person to participate in or join a criminal street gang is guilty of a felony and, upon conviction shall be sentenced to imprisonment for a maximum of ten years, or to payment of a fine of not more than \$25,000, or to both imprisonment and a fine.

(2) Any person age 18 years or older who knowingly and willfully encourages, coerces, solicits or recruits, or otherwise causes or attempts to cause a minor to participate in or become a member of what the person knows to be a criminal street gang is guilty of a felony and, upon

conviction shall be sentenced to a term of imprisonment of not more than ten years, or to payment of a fine of not more than \$50,000, or to both imprisoned and a fine.

(3) Any person who knowingly and willfully coerces an individual to remain as a participant in a criminal street gang, or submit to a demand made by a criminal member or associate to commit a criminal act is guilty of a felony and, upon conviction shall be sentenced to a term of imprisonment of not more than ten years, or to payment of a fine of not more than \$50,000, or to both imprisonment and a fine.

(4) A criminal street gang member or associate shall be sentenced to a term of imprisonment of not more than ten years, or to the payment of a fine of not more than \$100,000, or both imprisonment and a fine if the criminal gang member is guilty of a felony and, upon conviction:

(A) uses force, a firearm or any other deadly weapon, or physical violence against an individual or member of his household; or

(B) threatens force against an individual or the individual's household where such threats are likely to place any reasonable person in reasonable fear or apprehension of bodily harm or death.

(e) Any person who communicates threats of bodily injury or damage to property of another as punishment or retaliation against a person for attempting to or having withdrawn from a criminal street gang is guilty of a felony, and upon conviction shall be sentenced to a maximum term of imprisonment for not more than ten years, or to payment of a fine of not more than \$50,000, or to both imprisonment and a fine.

(f)

(1) It is unlawful for any criminal street gang member or gang associate to deface by graffiti any real or personal property of the Territory, of another person, organization or entity with the specific intent of furthering or promoting the criminal acts or interests of a criminal street gang.

(2) A person convicted of the conduct prohibited in paragraph (1) of this subsection is guilty of a misdemeanor and, upon conviction, shall be sentenced to a term of imprisonment for not more than six months, or to payment of a fine of not more than \$1,000, or to both.

(3) The court may order restitution to the victim in the cost of removal of the graffiti, or the repair, or replacement costs of the property defaced, whichever is less.

(4) A person who voluntarily and at the person's own expense, removes graffiti for which he is responsible may be



credited for the removal costs against restitution ordered by the court.

(g) It is unlawful for any person to communicate with or to another, whether directly or indirectly, any threat of injury or damage to another person or property of another person or of any associate or family of another person with the intent to punish or retaliate against such person for providing statements or testimony against criminal street gangs or any criminal street gang member or associate. Any violation of this subsection shall constitute a felony and in addition to any other penalty provided by law is punishable by imprisonment of not less than two years nor more than 10 years, without suspension of sentence or probation or parole.

**Other Offenses.** Note that 14 V.I.C. § 3063 provides that any offense committed in violation of the Criminal Street Gangs chapter is considered a separate offense, and that nothing in Gangs chapter prohibits the arrest and prosecution of a criminal street gang member or criminal street gang associate for violations under other sections of the Virgin Islands Code except to the extent provided by law.

**Forfeiture Provisions.** Title 14 of the V.I. Code provides in § 3068 for “civil forfeiture to the Government of the Virgin Islands” of all property, both personal and real, of any kind or character that has been “used in substantial connection with, intended for use in the course of, derived from, traceable to, or realized through, including any profit or interest derived from: (1) any conduct in violation of any provision of this chapter; and (2) criminal street gang member recruitment.”

**Civil Cause of Action.** Under 14 V.I.C. § 3065 any person, organization or entity establishing by clear and convincing evidence coercion, intimidation, threats, or any injury by reason of a violation of the Criminal Street Gang chapter of the Virgin Islands Code has a civil cause of action for treble damages, punitive damages, injunctive relief, or any other appropriate relief in law or equity. If the plaintiff prevails, the plaintiff may also recover reasonable attorney fees and costs incurred from the investigation and litigation.

## **28.05 Participating in a Criminal Street Gang**

**The defendant is charged with the crime of [being a member of; participating in] a criminal street gang. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant actively [participated in; was a member of] a criminal street gang; and**

**(2) Defendant knowingly and willfully participated in one or more predicate criminal acts, which I will define for you, that were committed [for the benefit of; at the direction of; in association with] any criminal street gang; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 3062(a)**

### ***Practice Note***

The text of 14 V.I.C. § 3062(a) is as follows:

(a) Any person who actively participates in or is a member of a criminal street gang, and who knowingly and willfully participates in any predicate criminal act committed for the benefit of, at the direction of, or in association with any criminal street gang, is guilty of a felony and shall be sentenced to not more than ten years imprisonment or a fine of not more than \$50,000, or both such imprisonment and fine.

## **28.09 Predicate Criminal Acts**

**For purposes of the charge of <name(s) of gang offense(s) charged> any of the following is defined as a “predicate criminal act”:**

**(1) an act of violence; or**

**(2) any violation of the following crimes: <name of offense under 14 V.I.C. §§ 252, 253, 622, 623, 625, 707, 1081, 1083, 1382, 1383, 1501, 1507, 1508, 1510, or 1541; or 19 V.I.C. §§ 608, 608a, 608b, 611, 614a, or 614b>.**

### **Sources & Authority**

**14 V.I. Code § 3061**

### ***Practice Note***

The names of the crimes actually alleged should be used in element (2) of the definition of “predicate criminal acts” in this Instruction.

## **28.11 Use of Electronic Communication in Gang Activity**

The defendant is charged with the crime of using [an electronic communication; electronic communications] in criminal street gang activity. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant actively is a [member; associate of] a criminal street gang; and

(2) Defendant used [an electronic communication; electronic communications] to [intimidate or harass any person; advertise his own presence in the community] for the purpose of [benefiting; promoting; furthering the interests of] a criminal street gang[, including such activities as distributing, selling, transmitting, or posting on the internet any audio, video, or still image of criminal activities]; and

(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 3062(c)

### ***Practice Note***

The text of 14 V.I.C. § 3062(c) is as follows:

(c)

(1) Any criminal street gang member or associate who uses electronic communication to intimidate or harass any person for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang, including such activities as distributing, selling, transmitting, or posting on the internet any audio, video, or still image of criminal activities, is guilty of a felony and, upon conviction, shall be sentenced to a term of imprisonment of not more than five years, or to payment of a fine of not more than \$50,000, or to both imprisonment and a fine.

(2) Any person who uses electronic communication to advertise his presence in the community for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang, including such activities as distributing, selling, transmitting, or posting on the internet any audio, video, or still image of criminal activities, is guilty of a felony, and upon

conviction shall be sentenced to a term of imprisonment of not more than two years, or to payment of a fine of not more than \$15,000, or to both imprisonment and a fine.

Note that there is a definition of electronic communication in Instruction 28.01 if it is necessary to provide such a definition to the jury in a given case.

### **28.13 Soliciting or Recruiting Criminal Street Gang Members**

**The defendant is charged with the crime of [soliciting; recruiting] another person to [participate in; join] a criminal street gang. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) Th defendant [caused; encouraged; coerced; solicited; recruited] another person to [participate in; join] a criminal street gang; and**
- (2) Defendant acted knowingly and willfully; and**
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

**14 V.I. Code § 3062(d)**

#### ***Practice Note***

The text of 14 V.I.C. § 3062(d) is as follows:

(d)

(1) Any person who knowingly and willfully causes, encourages, coerces, solicits, or recruits another person to participate in or join a criminal street gang is guilty of a felony and, upon conviction shall be sentenced to imprisonment for a maximum of ten years, or to payment of a fine of not more than \$25,000, or to both imprisonment and a fine.

(2) Any person age 18 years or older who knowingly and willfully encourages, coerces, solicits or recruits, or otherwise causes or attempts to cause a minor to participate in or become a member of what the person knows to be a criminal street gang is guilty of a felony and, upon conviction shall be sentenced to a term

of imprisonment of not more than ten years, or to payment of a fine of not more than \$50,000, or to both imprisoned and a fine.

(3) Any person who knowingly and willfully coerces an individual to remain as a participant in a criminal street gang, or submit to a demand made by a criminal member or associate to commit a criminal act is guilty of a felony and, upon conviction shall be sentenced to a term of imprisonment of not more than ten years, or to payment of a fine of not more than \$50,000, or to both imprisonment and a fine.

(4) A criminal street gang member or associate shall be sentenced to a term of imprisonment of not more than ten years, or to the payment of a fine of not more than \$100,000, or both imprisonment and a fine if the criminal gang member is guilty of a felony and, upon conviction:

(A) uses force, a firearm or any other deadly weapon, or physical violence against an individual or member of his household; or

(B) threatens force against an individual or the individual's household where such threats are likely to place any reasonable person in reasonable fear or apprehension of bodily harm or death.

### **28.15 Recruiting a Minor for Gang Membership or Activity**

**The defendant is charged with the crime of [soliciting; recruiting] a minor to [participate in; join] a criminal street gang. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant [caused; encouraged; coerced; solicited; recruited] a minor to [participate in; join] a criminal street gang; and**

**(2) Defendant acted knowingly and willfully; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 3062(d)(2)**

## ***Practice Note***

The text of 14 V.I.C. § 3062(d)(2) is as follows:

(2) Any person age 18 years or older who knowingly and willfully encourages, coerces, solicits or recruits, or otherwise causes or attempts to cause a minor to participate in or become a member of what the person knows to be a criminal street gang is guilty of a felony and, upon conviction shall be sentenced to a term of imprisonment of not more than ten years, or to payment of a fine of not more than \$50,000, or to both imprisoned and a fine.

### **28.17 Coercing Continued Gang Membership or Activity**

**The defendant is charged with the crime of coercing an individual to [remain as a participant in a criminal street gang; submit to a demand made by a criminal member or associate to commit a criminal act]. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant coerced an individual to [remain as a participant in a criminal street gang; submit to a demand made by a criminal member or associate to commit a criminal act]; and**

**(2) Defendant acted knowingly and willfully; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 3062(d)(3)**

## ***Practice Note***

The text of 14 V.I.C. § 3062(d)(3) is as follows:

(3) Any person who knowingly and willfully coerces an individual to remain as a participant in a criminal street gang, or submit to a demand made by a criminal member or associate to commit a criminal act is guilty of a felony and, upon conviction shall be sentenced to a term of imprisonment of not more than ten years, or to payment of a fine of not more than \$50,000, or to both imprisonment and a fine.

## **28.19 Use of Weapon, Force or Violence by Gang Member Committing a Felony**

The defendant is charged with the crime of being [a criminal street gang member; an associate of a criminal street gang] and using [force; violence; weapons; <specify any combination of the foregoing>] in the commission of a felony. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant is a [member; associate] of a criminal street gang; and
- (2) Defendant committed a felony; and
- (3) In committing such felony, defendant

*\* Select element(s) charged in this case \**

... used [force; a firearm; a deadly weapon; physical violence] against [an individual; a member of (his; her) household];

... threatened force against [an individual; a member of the individual's household] where such threats were likely to place any reasonable person in reasonable [fear; apprehension] of [bodily harm; death];

and

(4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 3062(d)(4)

### ***Practice Note***

The text of 14 V.I.C. § 3062(d)(4) is as follows:

(4) A criminal street gang member or associate shall be sentenced to a term of imprisonment of not more than ten years, or to the payment of a fine of not more than \$100,000, or both imprisonment and a fine if the criminal gang member is guilty of a felony and, upon conviction:

(A) uses force, a firearm or any other deadly weapon, or physical violence against an individual or member of his household; or

(B) threatens force against an individual or the individual's household where such threats are likely to place any reasonable person in reasonable fear or apprehension of bodily harm or death.

## **28.21 Threats or Retaliation Against Person Withdrawing From or Attempting to Withdraw From Gang**

The defendant is charged with the crime of communicating threats as punishment or retaliation for a person [attempting to withdraw; having withdrawn] from a criminal street gang. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant communicated threats of [bodily injury; damage to property] of another as [punishment; retaliation] against a person for [attempting to withdraw; having withdrawn] from a criminal street gang; and

(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 3062(e)

### ***Practice Note***

The text of 14 V.I.C. § 3062(e) is as follows:

(e) Any person who communicates threats of bodily injury or damage to property of another as punishment or retaliation against a person for attempting to or having withdrawn from a criminal street gang is guilty of a felony, and upon conviction shall be sentenced to a maximum term of imprisonment for not more than ten years, or to payment of a fine of not more than \$50,000, or to both imprisonment and a fine.



## **28.23 Threats or Retaliation Against Persons Providing Statements or Testimony**

The defendant is charged with the crime of communicating threats as punishment or retaliation against a person for providing statements or testimony against [a criminal street gang; a criminal street gang member; an associate of a criminal street gang]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant communicated, whether directly or indirectly, any threat of [injury; damage] to [another person; property of another person; property of any associate of another person; property of the family of another person]; and

(2) Defendant's intent was to [punish; retaliate against] such person for providing [statements; testimony] against [a criminal street gang; a criminal street gang member; an associate of a criminal street gang]; and

(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 3062(g)

### ***Practice Note***

The text of 14 V.I.C. § 3062(g) is as follows:

(g) It is unlawful for any person to communicate with or to another, whether directly or indirectly, any threat of injury or damage to another person or property of another person or of any associate or family of another person with the intent to punish or retaliate against such person for providing statements or testimony against criminal street gangs or any criminal street gang member or associate. Any violation of this subsection shall constitute a felony and in addition to any other penalty provided by law is punishable by imprisonment of not less than two years nor more than 10 years, without suspension of sentence or probation or parole.

## Chapter 29. HATE CRIMES 14 V.I.C. § 3046 - 3051

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### 29.01 Hate Crime Definitions

The following definitions apply in prosecutions for crimes under the Hate-Motivated Crimes Act:

“Hate-motivated crime” means the commission, caused to be committed or attempted to be committed of any crime where conduct is maliciously motivated by prejudice of the victim’s actual or perceived race, color, religion, national origin, sex, ancestry, age, disability, sexual orientation or gender identity.

“Underlying crime” means any crime defined in chapters 11, 13, 21, 30, 31, 35, 43, 45, 49, 53, 55, 63, 67, 79, 85, 87, 91, 93, 95, 101, 104, and 108 of Title 14 of the V.I. Code, when the crime is committed, caused to be committed or attempted to be committed due to hate-motivated intent.

#### Sources & Authority

14 V.I. Code § 3047(b)-(c)

#### ***Practice Note***

The Legislature of the Virgin Islands adopted The Criminal Street Gang Prevention Act in 2014, in Act No. 7581. The definitional provisions in Title 14 V.I.C. § 3047 provide in their entirety:

#### **§ 3047. Definitions**

As used in this chapter:

(a) “Enhanced penalty” means a statutory enhancement where the sentence is increased significantly and could double or more the sentence for the underlying crime for an offender who intentionally selects a victim based upon at least in part, the victim’s race, color, religion, national origin, sex, ancestry, age, disability, sexual orientation or gender identity and where the offender is subjected to more severe penalties than would have been imposed in the absence of hate-motivated intent.

(b) “Hate-motivated crime” means the commission, caused to be committed or attempted to be committed of any crime where conduct is maliciously motivated by prejudice of the victim’s actual or perceived race, color, religion, national origin, sex, ancestry, age, disability, sexual orientation or gender identity.

(c) “Underlying crime” means any crime defined in chapters 11, 13, 21, 30, 31, 35, 43, 45, 49, 53, 55, 63, 67, 79, 85, 87, 91, 93, 95, 101, 104, and 108 of this title, when the crime is committed, caused to be committed or attempted to be committed due to hate-motivated intent.

**Selecting Needed Definitions.** The definition provision of the Act, § 3061, is set forth in full in the Instruction above. It is recommended that only those definitions that apply in crimes as charged in the pending case be utilized with the jury, to avoid confusion over issues that they do not need to consider.

**Enhanced Penalties.** More for the court than the jury, § 3047 defines “Enhanced penalty” as a statutory enhancement where the sentence is increased significantly and could double or more the sentence for the underlying crime for an offender who intentionally selects a victim based upon at least in part, the victim’s race, color, religion, national origin, sex, ancestry, age, disability, sexual orientation or gender identity and where the offender is subjected to more severe penalties than would have been imposed in the absence of hate-motivated intent. Likewise, 14 V.I.C. § 3048 specifies enhanced penalties for willfully committing, causing to be committed or attempting to commit any crime where the conduct is maliciously motivated by prejudice of the victim’s actual or perceived race, color, religion, national origin, sex, ancestry, age, disability, sexual orientation or gender identity.

**Evidence and Construction.** The Hate Crimes Act in § 3051 states that it is not to be construed to prohibit any expressive conduct protected from legal prohibition by or any activities protected by the Free Speech or Free Exercise Clauses of the First Amendment to the United States Constitution. Title 14 V.I.C. § 3049, in turn, provides that in a prosecution for an offense under the Hate Crime provisions, “evidence of expression or associations of the defendant may not be introduced as substantive evidence at trial, unless the evidence specifically relates to that offense.” However, § 3049 apparently authorizes use of a person’s expression or associations if such would be permitted under the rules of evidence governing impeachment of a witness.

### **29.03 Hate-Motivated Crime**

**The defendant is charged with committing an underlying crime as a hate-motivated crime. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant willfully committed the underlying crime of < name of underlying crime from chapters 11, 13, 21, 30, 31, 35, 43, 45, 49, 53, 55, 63, 67, 79, 85, 87, 91, 93, 95, 101, 104, and 108 of Title 14 of the V.I. Code>; and**

**(2) Defendant’s conduct was maliciously motivated by prejudice concerning the victim’s actual or perceived [race; color; religion; national origin; sex; ancestry; age; disability; sexual orientation; gender identity; <specify combination of any of the foregoing factors>] and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 3047, § 3048**

### ***Practice Note***

The “underlying crime” to be named in element (2) of this Instruction will be separately charged and named, and the instructions applicable for that specific offense should be used in connection with the underlying crime.

Title 14 V.I.C. § 3048 provides:

A person who willfully commits, causes to be committed or attempts to commit any crime and whose conduct is maliciously motivated by prejudice of the victim’s actual or perceived race, color, religion, national origin, sex, ancestry, age, disability, sexual orientation or gender identity is subject to the following enhanced penalties:

(a) If the maximum penalty for the underlying crime is one year or less, the penalty for violation of this section is imprisonment for not more than two years or a fine of not more than \$20,000.

(b) If the maximum penalty for the underlying crime is more than one year but less than five years, the penalty for violation of this section is imprisonment for not more than five years or a fine of not more than \$50,000.

(c) If the maximum penalty for the underlying crime is five years or more, the penalty for the underlying crime applies.

## Chapter 30. HIT AND RUN – 14 V.I.C. § 1389; 20 V.I.C. §512

### 30.01 Hit & Run; Leaving Scene of an Accident ..... 357

#### **30.01 Hit & Run; Leaving Scene of an Accident**

The defendant is charged with the crime of [hit and run; leaving the scene of an accident]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant was operating a motor vehicle when it injured *<name of victim>*;
- (2) That the defendant knew that (his; her) vehicle was involved in an accident in which a person was injured;
- (3) That defendant failed to remain at the place where the injury occurred to render assistance to the injured person; and
- (4) That this conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1389; 20 V.I.C. § 512

#### **Practice Note**

Section 512 of Title 20 within the Traffic Laws of the Virgin Islands, provides:

##### **§ 541. Accidents**

In case of accident to person or property due to the operation of a motor vehicle or bicycle, the person operating such vehicle shall stop and give his name and address and license number to the person injured, or to any policeman or other person interested, and if he is not the owner of the vehicle, also the name and address of such owner. He shall also report the details of such accident at the

nearest police station. In case of personal injury, the motor vehicle causing such injury shall take the injured person or persons to the hospital, if desired, or the residence of such injured person.

Title 14 of the V.I. Code, § 1389, entitled “**Leaving scene of accident,**” provides

Whoever, knowing that he has by the operation of a motor vehicle injured any person, fails to remain at the place where the injury occurred to render assistance to the injured person, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

No interpretive case law has been located by the Committee.

## Chapter 31. HOAX CRIMES 14 V.I.C. § 2142 - 2148

31.01	Creating a Bomb Hoax .....	359
31.03	Placing a False Bomb or Other Device .....	360
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### 31.01 Creating a Bomb Hoax

The defendant is charged with the crime of creating a bomb hoax. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant communicated through any medium the presence of a bomb; and
- (2) No such device was thereafter found; and
- (3) Defendant knew, intended or reasonably believed that (his; her) communication was likely to cause public alarm or disruption; and
- (4) The defendant made the communication willfully, deliberately or negligently; and
- (5) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 2142

### ***Practice Note***

The text of 14 V.I.C. § 2142 is as follows:

#### **§ 2142. Bomb hoax**

Whoever, willfully and deliberately or negligently communicates through any medium the presence of a bomb where there is no such device found, and which the person knows, intends

or reasonably believes is likely to cause public alarm or disruption has committed the act of creating a bomb hoax.

**Restitution.** Under 14 V.I.C. § 2148 the Government of the Virgin Islands may seek restitution of costs associated with responding to a bomb hoax, the placing of a false bomb, or the false reporting of an incident, including from the parents of a minor child found guilty of any of the offenses in this Chapter of the Virgin Islands Code.

### **31.03 Placing a False Bomb, Substance, or Device**

**The defendant is charged with the crime of placing a false [device; substance; bomb]. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) That the defendant**

*\* Select element(s) charged in this case \**

... placed a false [bomb; chemical substance; biological substance; radioactive substance];

... caused to be placed a [device; object] that by its design, construction, content or characteristics appeared [to be; to contain] a [bomb; chemical substance; biological substance; radioactive substance], **but was in fact an inoperative [facsimile; imitation of] such a [device; substance; bomb];**

**and**

**(2) The defendant [knew; intended; reasonably believed] that the object so placed would appear to be a [bomb; chemical substance; biological substance; radioactive substance] under circumstances in which it was likely to cause public alarm or disruption; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 2143**



## ***Practice Note***

The text of 14 V.I.C. § 2143 is as follows:

### **§ 2143. Placing a false bomb**

Whoever places a false bomb, chemical, biological, or radioactive substance or causes to be placed, any device or object that by its design, construction, content or characteristics appears to be or to contain, a bomb, chemical, biological or radioactive substance, but it is, in fact an inoperative facsimile or imitation of such a device or substance or bomb and which the person knows, intends or reasonably believes will appear to be a bomb or such substance under circumstances in which it is likely to cause public alarm or disruption has committed the act of placing a false bomb, chemical, biological or radioactive substance.

### **31.05 False Reporting in the Third Degree**

The defendant is charged with the crime of false reporting in the third degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

#### **(1) That the defendant**

*\* Select element(s) charged in this case \**

- ... [initiated; circulated] a false [report; warning] of an alleged [occurrence; impending occurrence] of a [crime; catastrophe; emergency] under circumstances in which it is not unlikely that public [alarm; inconvenience] would result;
- ... reported, by word or action, to [an official; a quasi-official] [agency; organization] having the function of dealing with emergencies involving danger to life or property, an alleged [occurrence; impending occurrence] of [a catastrophe; an emergency] which [did not in fact occur; does not, in fact, exist];
- ... gratuitously reported to a law enforcement [officer; agency]:
  - the alleged occurrence of an [offense; incident] which did not in fact occur;
  - an allegedly impending occurrence of an [offense; incident] which in fact is not about to occur;
  - false information relating to [an actual offense; an actual incident; the alleged implication of some person therein];

and

**(2) The defendant knew the information [reported; conveyed; circulated] was [false; baseless]; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 2145**

### ***Practice Note***

The text of 14 V.I.C. § 2145 is as follows:

**§ 2145. False reporting; third degree**

A person is guilty of falsely reporting an incident in the third degree when, knowing the information reported, conveyed or circulated to be false or baseless, he:

- (a) initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a crime, catastrophe or emergency under circumstances in which it is not unlikely that public alarm or inconvenience will result; or
- (b) reports, by word or action, to an official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a catastrophe or emergency which did not in fact occur or does not, in fact, exist; or
- (c) gratuitously reports to a law enforcement officer or agency (1) the alleged occurrence of an offense or incident which did not in fact occur; or (2) an allegedly impending occurrence of an offense or incident which in fact is not about to occur; or (3) false information relating to an actual offense or incident or to the alleged implication of some person therein.

### **31.07 False Reporting in the Second Degree**

The defendant is charged with the crime of false reporting in the second degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That the defendant**

*\* Select element(s) charged in this case \**

... [initiated; circulated] a false [report; warning] of an alleged [occurrence; impending occurrence] of a [fire; explosion; release of a hazardous substance] under circumstances in which it was not unlikely that public [alarm; inconvenience] would result;

... reports, by word or action, to any [official; quasi-official] [agency; organization] having the function of dealing with emergencies involving danger to life or property, an alleged [occurrence; impending occurrence] of a [fire; explosion; release of a hazardous substance] which did not, in fact, [occur; exist];

... reports, by word or action, to the [Department of Human Services; Department of Health], an alleged [occurrence; condition] of child [abuse; maltreatment] which did not, in fact, [occur; exist];

**and**

**(2) Defendant knew the information reported, conveyed or circulated was false or baseless; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

14 V.I. Code § 2146

#### ***Practice Note***

The text of 14 V.I.C. § 2146 is as follows:

**§ 2146. False reporting; second degree**

A person is guilty of falsely reporting an incident in the second degree when, knowing the information reported, conveyed or circulated to be false or baseless, he:

(a) initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, or the release of a hazardous substance under circumstances in which it is not unlikely that public alarm or inconvenience will result;

(b) reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion, or the release of a hazardous substance which did not, in fact, occur or does not, in fact, exist; or

(c) reports, by word or action, to the Department of Human Services or Department of Health, an alleged occurrence or condition of child abuse or maltreatment which did not, in fact, occur or exist.

Note that under 14 V.I.C. § 2147, if the defendant is convicted of this Second Degree crime of false reporting, and has previously been convicted of that same offense, the defendant is guilty of First Degree false reporting. It is suggested that the jury instructions be given for the Second Degree and the court can thereafter take cognizance of the prior conviction for the same offense, and enter judgment accordingly for false reporting in the First Degree.

### **31.09 False Reporting in the First Degree (General)**

The defendant is charged with the crime of false reporting in the first degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That the defendant**

*\* Select element(s) charged in this case \**

- ... [initiated; circulated] a false [report; warning] of an alleged [occurrence; impending occurrence] of a [crime; catastrophe; emergency; fire; explosion; release of a hazardous substance] under circumstances in which it was not unlikely that public [alarm; inconvenience] would result;
- ... reported, by word or action, to [an official; a quasi-official] [agency; organization] having the function of dealing with emergencies involving danger to life or property, an alleged [occurrence; impending occurrence]

of [a catastrophe; an emergency; a fire; an explosion; a release of a hazardous substance] which did not, in fact, [occur; exist];

**and**

**(2) That defendant knew the information** [reported; conveyed; circulated] **was** [false; baseless]; **and**

**(3) That another person**

*\* Select element(s) charged in this case \**

... who was an [employee; member] of any [official; quasi-official] agency having the function of dealing with emergencies involving danger to life or property;

... who is a volunteer firefighter with a fire department, fire company, or any unit thereof as defined in the volunteer firefighters' benefit law;

... who is a volunteer ambulance worker with a volunteer ambulance corporation or any unit thereof as defined in the volunteer ambulance workers' benefit law;

**and**

**(4) suffered serious physical injury or was killed**

*\* Select element(s) charged in this case \**

... in the performance of (his; her) official duties in traveling to or working at or returning to a [firehouse; police station; quarters; other base facility] from the location identified in such report;

... as a result of any vehicular or other accident involving any emergency vehicle that is [responding to; operating at; returning from] the location identified in such report;

**and**

**(5) This conduct took place on or about <date> in** [this judicial division; <name of judicial division>].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 2147**

## ***Practice Note***

The text of 14 V.I.C. § 2147 is as follows:

### **§ 2147. False reporting; first degree**

(a) A person is guilty of falsely reporting an incident in the first degree when he:

(1) commits the crime of falsely reporting an incident in the second degree as defined in section 2146, and has previously been convicted of that crime; or

(2) commits the crime of falsely reporting an incident in the third degree as defined in subsections (a) and (b) of section 2145 or falsely reporting an incident in the second degree, as defined in subsections (a) and (b) of section 2146 and another person who is an employee or member of any official or quasi-official agency having the function of dealing with emergencies involving danger to life or property, or who is a volunteer firefighter with a fire department, fire company, or any unit thereof as defined in the volunteer firefighters' benefit law, or who is a volunteer ambulance worker with a volunteer ambulance corporation or any unit thereof as defined in the volunteer ambulance workers' benefit law, suffers serious physical injury or is killed in the performance of his or her official duties in traveling to or working at or returning to a firehouse, police station, quarters or other base facility from the location identified in such report; or

(3) commits the crime of falsely reporting an incident in the third degree as defined in subsections (a) and (b) of section 2145 or falsely reporting an incident in the second degree as defined in subsections (a) and (b) of section 2146 of this chapter and another person suffers serious physical injury or is killed as a result of any vehicular or other accident involving any emergency vehicle that is responding to, operating at, or returning from the location identified in such report; or

(4) knowing the information reported, conveyed or circulated to be false or baseless and under circumstances in which it is likely public alarm or inconvenience will result, he or she initiates or circulates a report or warning of an alleged occurrence or an impending occurrence of a fire, an explosion, or the release of a hazardous substance upon school grounds and it is likely that persons are present on said grounds;

(b) an emergency vehicle as referred to in paragraph (3) of subsection (a) shall include any vehicle operated by any employee or member of any official or quasiofficial agency having the function of dealing with emergencies involving danger to life or property and shall include, but not necessarily be limited to, an emergency vehicle which is operated by a volunteer firefighter

with a fire department, fire company, or any unit thereof as defined in the volunteer firefighters' benefit law; or by a volunteer ambulance worker with a volunteer ambulance corporation, or any unit thereof as defined in the volunteer ambulance workers' benefit law.

**Prior Conviction Provision.** Note that under 14 V.I.C. § 2147, if the defendant is convicted of this Second Degree crime of false reporting, and has previously been convicted of that same offense, the defendant is guilty of First Degree false reporting. It is suggested that the jury instructions be given for the Second Degree and the court can thereafter take cognizance of the prior conviction for the same offense, and enter judgment accordingly for false reporting in the First Degree.

**Elements (1) and (3).** The many statutory options provided in Elements (1) and (3) of this Instruction should be edited down to include only those that are applicable on the facts of the case.

### **31.11 False Reporting in the First Degree (School grounds)**

The defendant is charged with the crime of false reporting in the first degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant [initiated; circulated] a [report; warning] of an alleged [occurrence; impending occurrence] of [a fire; an explosion; a release of a hazardous substance] upon school grounds; and

(2) It was likely that persons were present on the school grounds; and

(3) That defendant knew the information [reported; conveyed; circulated] was [false; baseless]; and

(4) That defendant knew that under the circumstances it was likely that public [alarm; inconvenience] would result; and

(5) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 2147(a)(4)

## ***Practice Note***

The text of 14 V.I.C. § 2147(a)(4) is as follows:

### **§ 2147. False reporting; first degree**

(a) A person is guilty of falsely reporting an incident in the first degree when he: \* \* \* \*

(4) knowing the information reported, conveyed or circulated to be false or baseless and under circumstances in which it is likely public alarm or inconvenience will result, he or she initiates or circulates a report or warning of an alleged occurrence or an impending occurrence of a fire, an explosion, or the release of a hazardous substance upon school grounds and it is likely that persons are present on said grounds.



## Chapter 32. HOME INVASION 14 V.I.C. § 475 - 476

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### 32.01 Home Invasion

The defendant is charged with the crime of home invasion. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant [knowingly entered the dwelling place of another when (he; she) knew or had reason to know that one or more persons were present; knowingly entered the dwelling place of another and remained there until (he; she) knew or had reason to know that one or more persons were present]; and

(2) Defendant

*\* Select element(s) charged in this case \**

... while armed with a dangerous weapon other than a firearm, as I will define that for you, [used force; threatened the use of force] upon any [person; persons] within such dwelling place, whether or not injury occurred;

... intentionally caused any injury to any [person; persons] within such dwelling place;

... while armed with a firearm, [used force; threatened the use of force] upon any [person; persons] within such dwelling place, whether or not injury occurred;

... [used force; threatened the use of force] upon any [person; persons] within such dwelling place, whether or not injury occurred, and during the commission of the offense personally discharged a firearm;

... personally discharged a firearm that caused [bodily harm; permanent disability; permanent disfigurement; death] to another person within such dwelling place;

and

(3) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>]; and

(4) Defendant was not then a peace officer acting in the line of duty.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**14 V.I. Code § 475**

### ***Practice Note***

The text of 14 V.I.C. § 475(a) is as follows:

#### **§ § 475. Home invasion**

(a) A person who is not a peace officer acting in the line of duty commits home invasion when, without authority, he knowingly enters the dwelling place of another when he knows or has reason to know that one or more persons are present or when he knowingly enters the dwelling place of another and remains in such dwelling place until the person knows or has reason to know that one or more persons is present and:

(1) While armed with a dangerous weapon, as defined in 14 V.I.C. § 2251, other than a firearm, uses force or threatens the use of force upon any person or persons within such dwelling place, whether or not injury occurs; or

(2) Intentionally causes any injury to any person or persons within such dwelling place; or

(3) While armed with a firearm uses force or threatens the use of force upon any person or persons within such dwelling place, whether or not injury occurs; or

(4) Uses force or threatens the use of force upon any person or persons within such dwelling place, whether or not injury occurs, and during the commission of the offense personally discharges a firearm; or

(5) Personally discharges a firearm that causes bodily harm, permanent disability, permanent disfigurement, or death to another person within such dwelling place.

**Affirmative Defense.** Note that under § 475(b) the Legislature has provided that it is an affirmative defense to a charge of home invasion that the accused who knowingly enters the dwelling place of another and remains in such dwelling place until the person knows or has reason to know that one or more persons is present either immediately leaves such premises or surrenders to the person or persons lawfully present therein without either attempting to cause or causing serious bodily injury to any person present therein.

### **32.03 Dangerous Weapons Definitions for Home Invasions**

For the crime of home invasion, the term “dangerous weapon” other than a firearm includes any instrument or weapon of the kind commonly known as a blackjack, billy, sandclub, metal knuckles, bludgeon, switchblade knife or gravity knife, a dagger, dirk, dangerous knife, razor, or stiletto.

A “switchblade knife” means any knife which has a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

The term “gravity knife” means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.

#### **Sources & Authority**

14 V.I. Code § 2251

#### ***Practice Note***

The text of the Home Invasion statute, 14 V.I.C. § 475(a), cross references the definitions in 14 V.I.C. § 2251 for the concept of “dangerous weapon” in such crimes, and § 2251 is the source of the definitions used in this Instruction. Only the portion(s) of the definitions provided in this Instruction that relate to the facts being presented in the pending case should be used in the instruction given to the jury, to avoid needless confusion or speculation.

## Chapter 33. HOMICIDE 14 V.I.C. § 921 – 929

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### 33.01 Definition of Murder

Murder is the unlawful killing of a human being with malice aforethought.

#### Sources & Authority

14 V.I. Code § 921

#### ***Practice Note***

The text of 14 V.I.C. § 921 is set forth verbatim in the definitional Instruction above.

### 33.03 First Degree Murder

The defendant is charged with the crime of first degree murder. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant killed *<name of victim>*; and
- (2) That the defendant acted with malice aforethought; and
- (3) That the killing was committed

*\* Select element(s) charged in this case \**

... by means of [poison; lying in wait; torture; detonation of a bomb];

... in any kind of willful, deliberate and premeditated manner;

... in [committing; attempting to commit] [arson; burglary; kidnapping; rape; robbery; mayhem; assault in the first degree; assault in the second degree; assault in the third degree; larceny];

... against [an official; a law enforcement officer; an officer or employee of the Government of the Virgin Islands working with law enforcement officials in furtherance of a criminal investigation [while the victim was engaged in the performance of official duties]; [because of the performance of the victim's official duties];[because of the victim's status as a public servant];

... was committed against any person assisting a criminal investigation, while that assistance was being rendered;

and

**(2) this conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

#### **14 V.I. Code § 922**

*Heyliger v. People*, 66 V.I. 340 (V.I. 2017); *Velazquez v. People*, 65 V.I. 312 (V.I. 2016); *Cascen v. People*, 60 V.I. 392 (V.I. 2014); *James v. People*, 60 V.I. 311 (V.I. 2013); *People v. Burke*, 60 V.I. 257 (V.I. 2013); *Tyson v. People*, 59 V.I. 391 (V.I. 2013); *Phillip v. People*, 58 V.I. 569 (V.I. 2013); *Francis v. People*, 57 V.I. 201, (V.I. 2012); *Codrington v. People*, 57 V.I. 176 (V.I. 2012); *Nicholas v. People*, 56 V.I. 718 (V.I. 2012); *Brown v. People*, 54 V.I. 496 (V.I. 2010)

### ***Practice Note***

The text of 14 V.I.C. § 922 is as follows:

#### **§ 922. First and second degree murder defined**

(a) All murder which—

(1) is perpetrated by means of poison, lying in wait, torture, detonation of a bomb or by any other kind of willful, deliberate and premeditated killing;

(2) is committed in the perpetration or attempt to perpetrate arson, burglary, kidnapping, rape, robbery or mayhem, assault in the first degree, assault in the second degree, assault in the third degree and larceny; or

(3) is committed against (A) an official, law enforcement officer, or other officer or employee of the Government of the Virgin Islands while working with law enforcement officials in furtherance of a criminal investigation (i) while the victim is engaged in the performance of official duties; (ii) because of the performance of the victim's official duties; or (iii) because of the victim's status as a public servant; or (B) any person assisting a criminal investigation, while that assistance is being rendered and because it is first degree murder; is murder in the first degree.

(b) All other kinds of murder are murder in the second degree.

**Selecting Applicable Elements.** It is anticipated that the Instructions given will select the appropriate option(s) in Element 3 of the offense as defined above based upon the facts of the case as presented.

**Distinguishing First and Second Degree Murder.** The difference between first- and second-degree murder is that first-degree murder requires a killing done with malice aforethought and which was “willful, deliberate, and premeditated.” 14 V.I.C. §§ 921; 922(a)(1). *See also Gov't of the V.I. v. Rosa*, 399 F.3d 283, 295 n.13 (3d Cir. 2005) (“First-degree murder is distinguishable from second-degree murder in that to prove second-degree murder it is not necessary to prove deliberation and premeditation.”).

As described by the Supreme Court of the Virgin Islands in *Brown*, premeditation is

the deliberate formation of and reflection upon the intent to take a human life, and involves the mental process of thinking beforehand, deliberation, reflection, weighing, or reasoning for a period of time, however short. Premeditation, however, may be established by circumstantial evidence, including: the nature of the weapon used, lack of provocation, the defendant's conduct before and after the killing, threats and declarations of the defendant before and during the occurrence, or the dealing of lethal blows after the deceased was felled and rendered helpless. Other relevant factors include ill will or previous difficulties between the parties, evidence that the killing was done in a brutal manner, the nature and number of the victim's wounds, the use of a deadly weapon upon an unarmed victim, the particular cruelty of the killing, declarations by the defendant of an intent to kill, evidence of procurement of a weapon, preparations before the killing for concealment of the crime, and calmness immediately after the killing . . . . The premeditation required for a first-degree murder conviction is not inferred from the use of a deadly weapon alone.

54 V.I. at 506-07 (“[T]o premeditate a killing is to conceive the design or plan to kill. A deliberate killing is one which has been planned and reflected upon by the accused and is committed in a cool state of the blood, not in sudden passion engendered by [the] just cause of provocation.”). Because first-degree murder requires proof of a more serious level of mental culpability beyond that of actual malice, the punishment for first-degree murder is more serious than that for second-degree murder. Compare 14 V.I.C. § 923 (a) (“Whoever commits murder in the first degree shall be imprisoned for his natural life without parole.”) with 14 V.I.C. 923(b) (permitting a trial court to sentence an individual convicted of second-degree murder to any term with a minimum of five years or a minimum of ten years if the victim was a law enforcement officer engaged in the line of duty at the time of the killing). *Nicholas*, 56 V.I. at 732-33.

**Sufficiency of Instruction Language.** Based on the plain language of 14 V.I.C. § 922(a)(1), both the information charging defendant and the trial court's final jury instructions properly stated the elements of first degree murder where they each set out the three elements of the offense; no other proof or elements were required. *Codrington*, 57 V.I. at 185-87.

**Premeditation.** With regard to attempted first-degree murder there was sufficient evidence of premeditation when the victim testified that after shooting him the first time, defendant walked in his direction and fired two more rounds into his buttocks and back. *Velazquez*, 65 V.I. at 322). There was sufficient evidence of premeditation to support a conviction of first-degree murder when a witness testified that he saw defendant drive toward a beach, park for about 30 minutes, drive back up the road to sit in traffic, idle for two to three minutes, then lean over, point a gun through the window, and shoot as the first victim and others walked past. *Tyson*, 59 V.I. at 402. Defendant's action of stepping behind a wall to cock his gun before re-approaching the victim demonstrated that he possessed a fixed, deliberate design to kill him. *James*, 60 V.I. at 327).

**Causation.** The People's evidence must be sufficient to permit the jury to find beyond a reasonable doubt that the defendant's conduct caused the victim's death. *Burke*, 60 V.I. at 262-63.

**Weapons Use and Attempted First Degree Murder.** Evidence that defendant threatened the victim, retreated behind a partition, cocked his gun, and shot the victim in the face supported his convictions of attempted first-degree murder. *James*, 60 V.I. at 326-27.

**Self-defense.** In a murder prosecution under Virgin Islands law, once the defendant has properly placed self-defense in issue, the People must prove its absence beyond a reasonable doubt. *Gov't of Virgin Islands v. Smith*, 949 F.2d 677 (3d Cir. 1991). Self-defense and other defenses recognized in the Virgin Islands are discussed in Chapter 3 of these Model Jury Instructions.

**Mention of Felony Murder in Instructions.** Because the court had to assume that jurors followed their instructions, and defendant, who was charged with first-degree murder, did not explain how a reference to felony murder affected his substantial rights in light of the fact that the jury was properly instructed on the elements of premeditated first-degree murder, and there was no plain error. *Cascen*, 60 V.I. at 404-05.

**Transferred Intent.** The Supreme Court of the Virgin Islands has concluded that nothing suggests that the Legislature intended to abrogate or modify the common-law of transferred intent. Under that doctrine the evidence was sufficient to support defendant's conviction for first-degree murder, establishing that he intended to kill the intended victim when he opened fire outside a housing project and killed the unintended victim instead. The same evidence was sufficient to support his conviction for the attempted first-degree murder of the intended victim. *Cascen*, 60 V.I. at 402-06. In another well-known case, there was sufficient evidence of intent since firing a weapon through a window at another vehicle was an intentional act that the jury could conclude was done to bring about the death of the occupant or occupants of that vehicle; and there was also evidence of premeditation in that defendant followed a car, sped up to come alongside it, and then slowed down to facilitate the shooting. *Phillip*, 58 V.I. at 585-87.

**Felony Murder.** Element 3[A] and 3[C] set forth the statutorily defined categories of felony murder defined as first degree in § 922 of Title 14. Despite the omission of the optional serial comma between “assault in the third degree” and “and larceny” in V.I. Code § 922(a)(2), the statute is clear and unambiguous that first-degree felony murder can be predicated solely upon assault in the third degree, one of the enumerated felonies in the statute. *Heyliger*, 66 V.I. at 351-53. The felony murder statute, as it has remained substantially unchanged since its adoption in 1921, is limited by the agency theory of the felony murder rule, under which only those killings committed by the felon or his or her agent or accomplice fall within the purview of felony murder. Thus, a felony murder conviction could not stand where the evidence was that the second victim, a bystander, was killed by return gunfire after defendant shot the first victim. *Tyson*, 59 V.I. at 415. In the Virgin Islands, only those killings committed by the felon or his or her agent or accomplice fall within the purview of felony murder. *People v. Faucher*, 2013 V.I. LEXIS 57 (V.I. Super. Ct. Aug. 19, 2013). The Superior Court has also held that an assault that is an integral part of the murder itself cannot be the predicate felony under the felony murder statute to aggravate the crime from second-degree murder to first-degree murder. *People v. Vergile*, 50 V.I. 127 (V.I. Super. Ct. 2008), *aff'd* on other grounds, 54 V.I. 455 (V.I. 2010).

### **33.05 Law Enforcement Officer Defined**

For purposes of the homicide statutes the term “law enforcement officer” means a police officer, probation officer, parole officer, correction officer, warden, prison guard and marshal.

#### **Sources & Authority**

14 V.I. Code § 929

#### **Practice Note**

The text of 14 V.I.C. § 929 is set forth verbatim in this definitional Instruction.



### **33.07 Second Degree Murder**

The defendant is charged with the crime of second degree murder. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant killed <name of victim>; and
- (2) Defendant acted with malice aforethought; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

##### **14 V.I. Code § 922**

*Titre v. People*, 2019 VI 3; *Powell v. People*, 2019 V.I. 2; *Alexander v. People*, 60 V.I. 486 (V.I. 2014); *Nicholas v. People*, 56 V.I. 718 (V.I. 2012); *McIntosh v. People*, 57 V.I. 669 (V.I. 2012); *Ritter v. People*, 51 V.I. 354 (V.I. 2009); *Gov't of the V.I. v. Sampson*, 42 V.I. 247 (D.V.I. App. Div. 2000)

#### **Practice Note**

The text of 14 V.I.C. § 922 is as follows:

##### **§ 922. First and second degree murder defined**

- (a) All murder which—
  - (1) is perpetrated by means of poison, lying in wait, torture, detonation of a bomb or by any other kind of willful, deliberate and premeditated killing;
  - (2) is committed in the perpetration or attempt to perpetrate arson, burglary, kidnapping, rape, robbery or mayhem, assault in the first degree, assault in the second degree, assault in the third degree and larceny; or
  - (3) is committed against (A) an official, law enforcement officer, or other officer or employee of the Government of the Virgin Islands while working with law enforcement officials in furtherance of a criminal investigation (i) while the victim is engaged in the performance of official duties; (ii) because of the performance of the victim's official duties; or (iii) because of the victim's status as a public servant; or (B) any person assisting a

criminal investigation, while that assistance is being rendered and because it is first degree murder;  
is murder in the first degree.

(b) All other kinds of murder are murder in the second degree.

**Malice Aforethought.** The Supreme Court explained in *Powell*, in the Virgin Islands, “malice aforethought ‘does not mean simply hatred or particular ill will, but extends to and embraces generally the state of mind with which one commits a wrongful act. It may be inferred from circumstances which show a wanton and depraved spirit, a mind bent on evil mischief without regard to its consequences. And where the killing is proved to have been accomplished with a deadly weapon, malice can be inferred from that fact alone.’” 2019 VI 2 ¶ 13; *Nicholas*, 56 V.I. at 731-32.

**Defining Malice Aforethought Once or Twice.** In a case where the trial court defined “malice aforethought” while instructing the jury on first degree murder, but omitted such a definition when next instructing on second degree murder, the Supreme Court in *Titre* commented that – within the context of the instructions as presented – the jury was properly instructed on the definition of malice aforethought and could freely apply that definition to both counts. It observed that “[t]here was no interruption during the instructions that would encourage confusion, and the term ‘malice aforethought’ is identical in both counts. Given this context, it is readily apparent that the jury instruction on malice aforethought was neither ‘misleading [n]or inadequate to guide the jury’s deliberation.’” *Titre*, 2019 VI 3 ¶ 23.

**A Brief Moment.** The requisite malice aforethought need only exist for a “brief moment” and “[i]t is not necessary to demonstrate that [the defendant] entertained and brooded over a plot to kill for any extended period of time.” *Alexander*, 60 V.I. at 511. The Supreme Court commented in *Nicholas*, “it is not the quantity of time that determines whether or not a killing is the result of premeditation; instead, it is the fact of deliberation before the homicidal act . . . and whether there was sufficient time for such a thought process — is a question that requires an examination of the circumstances surrounding the murder.” 56 V.I. at 735. The Court cited national authority for the concept that the amount of time needed for premeditation of a killing depends on the person and the circumstances. It must be long enough, after forming the intent to kill, for the killer to have been fully conscious of the intent and to have considered the killing. Thus the reference in *Brown* to “brief moment” was not an incorrect statement of the law, but the Court in *Nicholas* took the occasion to emphasize that premeditated murder requires evidence — which may be circumstantial — that the defendant actually deliberated and fully considered the killing before carrying it out. Whether the accused did so within the span of a “brief moment” or over a longer period of time, it is the fact of deliberation which must be proved in order to convict a defendant of premeditated murder.” 56 V.I. at 735.

**Duty to Retreat.** The Supreme Court has rejected a defendant’s assertion “that there is no limit to the amount of force to be used, and there is no duty to retreat.” It observed in *Powell* that – while § 927(2) does not set forth any limitations on the use of deadly force, “that statute must be read in conjunction with other statutes that set forth limitations on the justifiable use of force generally, whether deadly or non-deadly.” 2019 VI 2 ¶17. See *Ritter v. People*, 51 V.I. at 360; *McIntosh v. People*, 57 V.I. at 685-86 (providing that statutes governing general and specific acts should be harmonized whenever possible). Thus in *Powell* the Court stated that the statutes that govern the use of justifiable force “generally provide that such force may not exceed that

necessary to prevent the unlawful act.” 2019 VI 2 ¶17. See, e.g., 14 V.I.C. § 41 (“Any person about to be injured may make resistance sufficient to prevent ... an offense against his person or his family or some member thereof.”); 14 V.I.C. § 42 (“Any person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.”); 14 V.I.C. § 43 (“The right of self-defense does not extend to the infliction of more harm than is necessary for the purpose of defense.”); 14 V.I.C. § 44(b) (“In determining whether a person is justified in the use of justifiable force, the finder of fact shall consider all relevant circumstances . . .”); 14 V.I.C. § 293(b) (“[W]here violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose.”). The Court concluded that to construe § 927(2) in a vacuum would be tantamount to holding that the Legislature intended to place limitations on the use of non-deadly force, but envisioned no such limitation for the use of deadly force. It therefore concluded, “it is clear that the use of deadly force cannot be justified if the killing is unnecessary to repel an immediate and real threat, or is unnecessarily disproportionate to the threat posed.” *Powell*, 2019 VI 2 ¶17.

### **33.09 Motive**

**To prove the charge of murder the People do not have to prove a motive for the killing. The presence or absence of a motive may be considered in arriving at your verdict.**

#### **Sources & Authority**

*Ostalaza v. People*, 58 V.I. 531 (2013)

#### **Practice Note**

It is undisputed that the People need not prove motive in order to obtain a conviction on these charges; however, motive is a relevant factor for a jury to consider in a homicide case. See *Pointer v. United States*, 151 U.S. 396, 414 (1894) (“The absence of evidence suggesting a motive for the commission of the crime charged is a circumstance in favor of the accused, to be given such weight as the jury deems proper; but proof of motive is never indispensable to conviction.”).

In *Ostalaza* the Supreme Court of the Virgin Islands reviewed on appeal a trial in which the Superior Court had instructed the jury with regard to motive as follows:

In this case, the People did not allege a motive on the part of the defendant. Intent and motive are different concepts and should not be confused. Motive is what prompts a person to act or fail to act and may be attributed to a defendant. Intent refers only to the state of mind with which the act is done or omitted. Proof of motive is not a necessary element of the crimes charged in the Information.

58 V.I. at 557. The Supreme Court commented that the trial judge, “having decided to give an instruction on motive, should have made it clear to the jury that they could consider the lack of evidence of motive as a relevant factor in evaluating the defendants' guilt.” *Id.* The trial court's

instruction in that case simply stated that motive is not a necessary element of the charges. However, the jury was also instructed that they could use their common sense when evaluating the evidence (indicating that the jurors should “give the evidence a reasonable and fair construction in light of [their] common knowledge of the natural tendencies and inclinations of human beings”). The jury was further cautioned that they could not convict the defendant unless they were convinced of his guilt beyond a reasonable doubt. *Id.* at 558-59.

### **33.11 Voluntary Manslaughter**

The defendant is charged with the crime of voluntary manslaughter. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant killed <name of victim>; and
- (2) The killing was the result of an intentional act; and
- (3) The killing was committed while [in the sudden heat of passion; during a quarrel]; and
- (4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

##### **14 V.I. Code § 924**

*Freeman v. People*, 61 V.I. 537 (2014); *Hughes v. People*, 59 V.I. 1015 (V.I. 2013); *Codrington v. People*, 57 V.I. 176 (2012); *Nicholas v. People*, 56 V.I. 718 (V.I. 2012)

#### ***Practice Note***

The text of 14 V.I.C. § 924 is as follows:

##### **§ 924. Manslaughter defined and classified**

Manslaughter is the unlawful killing of a human being without malice aforethought. It is of two kinds—

- (1) voluntary; upon a sudden quarrel or heat of passion; or
- (2) involuntary; in the commission of an unlawful act, not amounting to a felony; or in the culpable omission of some legal

duty; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

**“Provocation.”** Voluntary manslaughter is a killing done “upon a sudden quarrel or heat of passion,” a requirement that was known at the common law as provocation. Provocation has been defined as “[p]assion ... as would cause an ordinary person to act on impulse and without reflection. Stated otherwise, the passion must be irresistible, or such as to render the person beyond the power of self-control.” *Nicholas*, 56 V.I. at 733.

The law treats manslaughter more leniently than second-degree murder because the defendant acted under the heat of passion and accordingly acted without the malice aforethought necessary for murder. See 14 V.I.C. § 925 (setting the punishment for voluntary manslaughter at any term of years up to ten years, unless the victim was a law enforcement officer engaged in the line of duty at the time of the killing, in which case the maximum term is fifteen years); 40 C.J.S. Homicide § 35 (“[T]he essential element of voluntary manslaughter that distinguishes it from second degree murder is whether the killing was committed in a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner.”).

The federal courts noted almost three decades ago that voluntary manslaughter in the Virgin Islands requires that: (1) the defendant must have unlawfully killed another; (2) with malice aforethought; (3) upon a sudden quarrel or heat of passion; and (4) with either an intent to kill or an intention to inflict serious or grievous bodily injury that would likely cause or result in the victim's death. *Virgin Islands v. Knight*, 764 F. Supp. 1042, 26 V.I. 280, 1991 U.S. Dist. LEXIS 6964 (D.V.I. 1991). A defendant's testimony that he struggled with the victim after she brandished defendant's revolver, if believed, would demonstrate voluntary, rather than involuntary, manslaughter. *Virgin Islands v. Commissiong*, 706 F. Supp. 1172 (D.V.I. 1989), limited, *Virgin Islands v. Isaac*, 50 F.3d 1175 (3d Cir. 1995).

**Lesser Included Offense Issues.** *Codrington v. People* noted that “voluntary and involuntary manslaughter are lesser-included offenses of murder, and an instruction on both offenses must be given if a rational view of the evidence supports the instruction.” 57 V.I. at 194. A conviction for voluntary manslaughter as a lesser included offense may stand even absent evidence of a sudden quarrel or heat of passion, as long as the evidence was sufficient to convict the defendant of the greater offense. *Freeman*, 61 V.I. at 543; *Hughes*, 59 V.I. at 1022 n.4.

**Instruction on Involuntary Manslaughter.** The Superior Court properly denied appellant's request for a jury instruction on involuntary manslaughter under 14 V.I.C. § 924 for premeditated murder in a case where, on the facts presented, no rational jury could have found appellant guilty of that crime because there was no evidence that the killing was unintentional. *Boston v. Virgin Islands*, 2005 U.S. Dist. LEXIS 3645 (D.V.I. 2005).

### **33.13 Involuntary Manslaughter**

The defendant is charged with the crime of involuntary manslaughter. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant killed *<name of victim>*; and
- (2) The killing was the result of an intentional act; and
- (3) The killing was committed

*\* Select element(s) charged in this case \**

... in the commission of an unlawful act, not amounting to a felony;

... in the culpable omission of some legal duty;

... in the commission of a lawful act which might produce death, [in an unlawful manner; without due caution and circumspection];

and

(4) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

**14 V.I. Code § 924**

*Milligan v. People*, 69 V.I. 779 (V.I. 2018); *Thomas v. People*, 63 V.I. 595 (V.I. 2015), *Codrington v. People*, 57 V.I. 176 (2012)

#### ***Practice Note***

The text of 14 V.I.C. § 924 is as follows:

##### **§ 924. Manslaughter defined and classified**

Manslaughter is the unlawful killing of a human being without malice aforethought. It is of two kinds—

- (1) voluntary; upon a sudden quarrel or heat of passion; or
- (2) involuntary; in the commission of an unlawful act, not amounting to a felony; or in the culpable omission of some legal duty; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

Involuntary manslaughter is the unlawful killing of a human being without malice aforethought, done in one of three ways: (1) in the commission of an unlawful act, not amounting to a felony, (2) in the culpable omission of some legal duty, or (3) in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. 14 V.I.C. § 924. Where the defendant possessed an unlicensed firearm and discharged it twice, the Supreme Court found it “impossible that [this] behavior could have been found, by a rational jury, to have been involuntary manslaughter. Accordingly, the Superior Court did not err by failing to give an involuntary manslaughter instruction in that case. *Codrington*, 57 V.I. at 195. See also *Thomas*, which states, “a rational trier of fact could certainly determine that . . . the victim [died from] an involuntary manslaughter, in an accidental shooting by someone as a result of an unsecured firearm; . . . a defendant can be guilty of involuntary manslaughter under 14 V.I.C. § 924 by unlawfully killing a human being, without malice aforethought, by the culpable omission of some legal duty.” 63 V.I. at 604.

**Malice in Involuntary Manslaughter Cases.** Because voluntary manslaughter does not require malice, proof of a defendant's intent to kill is unnecessary; therefore, the trial court was correct at sentencing in stating that the determination of whether defendant intended to kill the victim was not at issue, and defendant's arguments to the contrary were without merit. *Chciuk-Davis v. People*, 57 V.I. 317 (V.I. 2012).

**Falling Asleep at the Wheel.** In *Milligan* the Virgin Islands Supreme Court, surveying authority elsewhere, concluded that if a jury found that the defendant struck a pedestrian with his truck because he fell asleep at the wheel, “this fact, without more, could only be sufficient to convict [him] of negligence and possibly of negligent homicide . . . because, although evidence that a defendant fell asleep at the wheel is sufficient proof of negligence, it is well-settled that the mere act of falling asleep while driving does not per se demonstrate a willful or wanton disregard for the safety of others.” 69 V.I. at 786-87. Instead, there must be some proof that the driver consciously ignored, for a period of time, substantial warnings that he or she might fall asleep, and continued to drive despite the warnings, before actually falling asleep and causing an accident. In *Milligan* the jury acquitted the defendant of negligent homicide, which required the People to demonstrate that the victim's death ensued due to the defendant's “operation of [his] vehicle in a reckless manner or with disregard for the safety of others.” 20 V.I.C. § 504. The negligent homicide statute does not specifically require a defendant to exhibit willful or wanton disregard for the safety of others, as does § 492. This is because “ordinary negligence and willful and wanton misconduct are different in kind and character.” *Milligan*, 69 V.I. at 787. Since the jury determined that it did not have sufficient evidence to convict this defendant under the negligent homicide standard, the Court on appeal concluded that “there is likewise no way the evidence was sufficient to convict him of the same or higher willful and wanton conduct necessary for a finding of reckless driving.” *Id.* at 787-88. For the jury to reach a finding in this case that this defendant was (1) sleep deprived and (2) recklessly disregarded signs of sleep deprivation when he got behind the wheel “requires [the jury here] to draw [ ] one inference upon another.” *Id.* at 792, citing *People v. Clarke*, 55 V.I. 473, 481-82 (V.I. 2011).

**Refusal of Involuntary Manslaughter Instruction.** In one well-known case, it was held to be impossible, based on the evidence, that defendant's behavior could have been found by a rational jury to have been involuntary manslaughter, thus the trial court did not err by failing to give an instruction on that charge as a lesser included offense of first-degree murder. *Codrington*, 57 V.I. at 194-95.

### **33.09 Excusable Homicide Defined**

Homicide is excusable—

- (1) when committed by accident and misfortune, or in doing any lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent; or
- (2) when committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.

#### **Sources & Authority**

14 V.I. Code § 926

#### ***Practice Note***

The text of 14 V.I.C. § 926 is set forth verbatim in this definitional Instruction.

**Acquittal and Discharge.** In § 928 of the Virgin Islands Code, Title 14, the Legislature provides: “Whenever a homicide appears to be justifiable or excusable, the person charged must, upon his trial, be acquitted and discharged.”

**Accident or Misfortune.** The Third Circuit said several decades ago that homicide is excusable when committed by accident or misfortune, or in doing any lawful act by lawful means without unlawful intent, or when committed by accident or misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner. *Gov’t of the Virgin Islands v. Robinson*, 29 F.3d 878 (3d Cir. 1994); *Gov’t of Virgin Islands v. Smith*, 278 F.2d 169 (3d Cir. 1960).

### **33.11 Justifiable Homicide Defined**

Homicide is justifiable when committed by—

- (1) public officers and those acting by their command in their aid and assistance,
  - (A) in obedience to any judgment of a competent court;
  - (B) when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or
  - (C) when necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest;
- (2) any person—



(A) when resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person;

(B) when committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein;

(C) when committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony, or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person on whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or

(D) when necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed or in lawfully suppressing any riot, or in lawfully keeping or preserving the peace.

### Sources & Authority

14 V.I. Code § 927

*Powell v. People*, 2019 VI 2

### ***Practice Note***

The text of 14 V.I.C. § 927 is set forth verbatim in this definitional Instruction.

**Acquittal and Discharge.** In § 928 of the Virgin Islands Code, Title 14, the Legislature has provided: “Whenever a homicide appears to be justifiable or excusable, the person charged must, upon his trial, be acquitted and discharged.”

**Assessing the Amount of Force.** In *Powell*, the Supreme Court emphatically rejected an argument “that there is no limit to the amount of force to be used, and there is no duty to retreat,” observing that while § 927 does not expressly “set forth any limitations on the use of deadly force, that statute must be read in conjunction with other statutes that set forth limitations on the justifiable use of force generally, whether deadly or non-deadly” 2019 VI ¶17, citing *Ritter v. People*, 51 V.I. 354, 360 (V.I. 2009) and *McIntosh v. People*, 57 V.I. 669, 685-86 (V.I. 2012) (stating that statutes governing general and specific acts should be harmonized whenever possible). The Court summarized this landscape: “The statutes that govern the use of justifiable force generally provide that such force may not exceed that necessary to prevent the unlawful act.” *Powell*, 2019 VI 2 ¶17.

In a concurring opinion in *Powell*, Justice Swan gave this summary of applicable principles under § 927:

¶66. First, immediacy of the threat is required by 14 V.I.C. § 927(2)(A)-(C). 14 V.I.C. § 927(2)(A) includes the language “when **resisting** any attempt.” . . . Therefore, subsection (2)(B) requires that any threat must be readily perceived and evident at the time of the homicide in order for it to be justified.

¶67 Section 927(2)(C) also requires that there be an “imminent danger of such design being accomplished.” A danger is imminent when it is “likely to occur at any moment; impending.” . . . Subsections (2)(A), (2)(B), and (2)(C) of section 927 all require the threat to Powell or his family to have been immediate and real. . . .

¶68 Section 927(2)(D) limits justifiable homicide to only those situations where it is “necessarily committed” under the circumstances therein provided. . . . Pursuant to 14 V.I.C. § 927(2)(D), justifiable homicide is committed, inter alia, when it is essential to lawfully keeping or preserving the peace. . . .

¶69 Under 14 V.I.C. § 927(2)(C), where the defendant was the initial aggressor, he must have “really and in good faith” attempted to decline any further struggle before committing homicide.

**Public Officers.** If a case is brought against a public officer or one under the command of a public officer, the instruction will need to be adapted under 14 V.I.C. 927(1).

**Self-defense.** Virgin Islands law specifies that killing in self-defense is lawful and justifiable homicide, and that self-defense is a statutory right. *Gov’t of the Virgin Islands v. Robinson*, 29 F.3d 878 (3d Cir. 1994). Once the defendant has properly placed self-defense in issue, prosecution must prove its absence beyond a reasonable doubt. *Gov’ of Virgin Islands v. Smith*, 949 F.2d 677 (3d Cir. 1991).

## **26.57 Justification Defense**

**The People are required to disprove a defendant’s justification defense beyond a reasonable doubt.**

### **Sources & Authority**

#### **14 V.I.C. § 928**

*Powell v. People*, 2019 V.I. 2; *Jackson-Flavius v. People*, 57 V.I. 716 (V.I. 2012); *Ritter v. People*, 51 V.I. 354 (2009)

### **Practice Note**

Title 14 V.I.C. § 928 states: “Whenever a homicide appears to be justified or excusable, the person charged must, upon his trial, be acquitted and discharged.”

In *Powell*, the defendant contended that he was justified in killing the victim because the homicide occurred “when resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.” 14 V.I.C. § 927(2)(A). The Supreme Court

noted that, under Virgin Islands law, once this defense was properly asserted the People were required to disprove the justification defense beyond a reasonable doubt, *id.* at ¶ 14, citing *Jackson-Flavius*, 57 V.I. at 726. In *Powell* there was a surveillance video recording viewed by the jury that showed the movements of the parties before the shots were fired, and the jury could have concluded that use of deadly force was not warranted because Powell had separated himself from the victim before he shot him, see or even that Powell was the initial aggressor who threatened the victim and shot him with his own firearm. The jury could also properly have concluded that shooting someone 16 times is not consistent with self-defense or other justifiable use of force. See *Ritter*, 51 V.I. at 361. Therefore, it was not error for the Superior Court to deny a motion for a judgment of acquittal predicated on the justification defense. *Powell*, 2019 V.I. at ¶ 18.

## Chapter 34. HUMAN TRAFFICKING

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### 34.01 Definitions

In offenses under Chapter 3A of Title 14 of the Virgin Islands Code:

- (1) “Adult” means an individual 18 years of age or older.
- (2) “Coercion” means:
  - (A) the use or threat of force against, abduction of, serious harm to, or physical restraint of, an individual;
  - (B) the use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of, an individual;
  - (C) the abuse or threatened abuse of law or legal process;
  - (D) controlling or threatening to control an individual’s access to a controlled substance as defined in 19 V.I.C. §§ 593(7) and 595, and any drug that has been declared by the Virgin Islands, state, or federal law to be illegal for sale, use, or possession unless lawfully dispensed under a prescription or over the counter;
  - (E) the destruction or taking of or the threatened destruction or taking of an individual’s identification document or other property;
  - (F) the use of debt bondage;
  - (G) the use of an individual’s physical or mental impairment when the impairment has a substantial adverse effect on the individual’s cognitive or volitional function; or
  - (H) the commission of civil or criminal fraud.

- (3) **“Commercial sexual activity”** means sexual activity for which anything of value is given to, promised to, or received by a person.
- (4) **“Debt bondage”** means inducing an individual to provide:
- (A) commercial sexual activity in payment toward or satisfaction of a real or purported debt; or
  - (B) labor or services in payment toward or satisfaction of a real or purported debt if:
    - (i) the reasonable value of the labor or services is not applied toward the liquidation of the debt; or
    - (ii) the length of the labor or services is not limited and the nature of the labor or services is not defined.
- (5) **“Human trafficking”** means the commission of an offense created under sections 133 through 137.
- (6) **“Identification document”** means a passport, driver’s license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.
- (7) **“Knowingly”** means having actual knowledge of or acting with deliberate ignorance or reckless disregard of an element, fact, or circumstance.
- (8) **“Labor or services”** means activity having economic value.
- (9) **“Minor”** means an individual under 18 years of age.
- (10) **“Person”** means an individual, estate, business, or nonprofit entity, or other legal entity. The term does not include a public corporation, or government or governmental subdivision, agency, authority, or instrumentality of the government.
- (11) **“Serious harm”** means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor, or services, or sexual activity to avoid incurring the harm.
- (12) **“Sexual activity”** means, cunnilingus, fellatio, anal intercourse, intrusion by any object into the genital or anal opening of another’s body, and the stimulation by hand or an object of another individual’s genitals or breasts for the purpose of arousing or gratifying the sexual desire of any individual. The term includes a sexually-explicit performance.
- (13) **“State”** means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any territory or insular possession subject to the

jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(14) “Victim” means an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this chapter been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

### Sources & Authority

14 V.I. Code § 132

*Fahie v. People*, 59 V.I. 505, 514 (V.I. 2013).

### Practice Note

**Other Jury Instructions Relating to Human Trafficking.** In the Virgin Islands, criminal false imprisonment occurs when someone “without lawful authority confines or imprisons another person within this Territory against his will ... with intent to cause him to be confined or imprisoned in this Territory against his will.” *Fahie*, 59 V.I. at 514, quoting 14 V.I.C. § 1051. Chapter 4 of these instructions contains Instruction 4.02, relating to the crime of kidnapping for human trafficking under § 1051. Elements set forth there focus on facts including whether the defendant unlawfully seized, took, inveigled, or kidnapped a person against his or her will, sold or transferred the services or labor of the person, or caused the victim to be sent out of this Territory, acting willfully and knowingly, and without lawful authority.

**Statutory Basis for Chapter 28 Instructions.** The Instructions in the present Chapter 28 are based on the text of the relevant sections in 14 V.I.C. §§ 131 – 154, which have not been the subject of authoritative construction by the Supreme Court of the Virgin Islands at the time these Instructions are being drafted. The short-title of this portion of Title 14 (Chapter 3A of the Code) is the Virgin Islands Uniform Prevention of and Remedies for Human Trafficking Act. The definitions in this Instruction 28.01 are found in 14 V.I.C. § 132.

**Restitutionary Remedy.** Note that under 14 V.I.C. § 140, the court must order a person convicted of an offense under 14 V.I.C. §§ 133, 134, or 135 to pay restitution to the victim of the offense for: (1) expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney’s fees and costs; and(2) an amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim: (A) the gross income to the defendant for, or the value to the defendant of, the victim’s labor, or services, or sexual activity; (B) the amount the defendant contracted to pay the victim; or (C) the value of the victim’s labor, or services, or sexual activity, calculated under the minimum-wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., or the Fair Labor Standards under 24 V.I.C. § 1 et seq. whichever is higher, even if the provisions do not apply to the victim’s labor or services or sexual activity. Indeed, the court must order restitution under § 140 (a) even if the victim is unavailable to accept payment of restitution, and if the victim does not claim restitution ordered under subsection (a) for five years after entry of the order, the restitution must be paid to the victim’s compensation fund to help other victims.

**Forfeiture Remedy.** Pursuant to 14 V.I.C. § 141, on motion, the court must order a person convicted of an offense under §§ 133, 134, or 135 to forfeit any interest in real or personal property that was used or intended to be used to commit or facilitate the commission of the offense, or which constitutes proceeds or was derived from proceeds that the person obtained, directly or indirectly, as a result of the offense. In a proceeding against real or personal property under § 141, the person convicted of the offense may assert a defense that the forfeiture is manifestly disproportional to the seriousness of the offense. The person has the burden to establish that defense by a preponderance of the evidence.

**Shield Statute.** It is provided in 14 V.I.C. § 143 that in a prosecution under the Virgin Islands Uniform Prevention of and Remedies for Human Trafficking Act (or a civil action under 14 V.I.C. § 147) evidence of specific instances of the alleged victim's past sexual behavior, or reputation, or opinion evidence of past sexual behavior of the alleged victim is not admissible unless the evidence is offered pursuant to Virgin Islands Rule of Evidence 412(b) by the prosecution to prove a pattern of human trafficking by the defendant.

**Immunity of Minors.** Under 14 V.I.C. § 144 an individual is not criminally liable or subject to a juvenile-delinquency proceeding for prostitution or other nonviolent crimes if he or she was a minor at the time of the offense and committed the offense as a direct result of being a victim. Under subsection (b) of this statute, an individual who has engaged in commercial sexual activity is not criminally liable or subject to a juvenile-delinquency proceeding for prostitution if the individual was a minor at the time of the offense. Subsection (c) provides that a minor who under subsection (a) or (b) is not subject to criminal liability or a juvenile-delinquency proceeding is presumed to be a person in need of supervision as defined in 5 V.I.C. § 2502(23). The statute, however, does not apply in a prosecution or a juvenile-delinquency proceeding for patronizing a prostitute.

**Civil Action Authorized.** Under express provisions of 14 V.I.C. § 147, a victim of human trafficking conduct may bring a civil action against a person that commits an offense against the victim under §§ 133, 134, or 135 for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief and – if the victim prevails – the court must award the victim reasonable attorney's fees and costs. An action under this section must be commenced not later than 10 years after the later of the date on which the victim is no longer was subject to human trafficking, or has reached 18 years of age. The statute provides that any damages awarded to a victim under this section for an item must be offset by any restitution paid to the victim pursuant to § 140. The remedy under § 147 does not preclude any other remedy available to a victim under federal law or law of the Virgin Islands other than this chapter.

### **34.03 Trafficking an Individual for Forced Labor**

The defendant is charged with the crime of trafficking an individual for the purpose of forced labor. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant knowingly [recruited; transported; transferred; harbored, received; provided; obtained; isolated; maintained; enticed] *<name of person>*; and
- (2) Defendant knowingly used coercion to compel *<name of person>* to provide labor or services; and
- (3) Defendant acted without lawful authority.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code §§ 133 – 134

#### ***Practice Note***

The relevant portions of the provisions of 14 V.I.C. § 133 and § 134 are as follows:

##### **§ 133. Trafficking an individual**

(a) A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

- (1) forced labor in violation of section 134; or
- (2) sexual servitude in violation of section 135.

##### **§ 134. Forced labor**

(a) A person commits the offense of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except when such conduct is permissible under federal law or law of the Virgin Islands other than this chapter.



### **34.05 Trafficking an Individual for Sexual Servitude**

The defendant is charged with the crime of trafficking an individual for the purpose of sexual servitude. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant knowingly [recruited; transported; transferred; harbored; received; provided; obtained; isolated; maintained; enticed] *<name of person>*; and
- (2) Defendant used [coercion; deception] to compel *<name of person>* to engage in commercial sexual activity.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code §§ 133 & 135

#### ***Practice Note***

The relevant portions of the provisions of 14 V.I.C. § 133 and § 135 are as follows:

##### **§ 133. Trafficking an individual**

(a) A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

- (1) forced labor in violation of section 134; or
- (2) sexual servitude in violation of section 135.

##### **§ 135. Sexual servitude**

(a) A person commits the offense of sexual servitude if the person knowingly:

\* \* \* \*

(2) uses coercion or deception to compel an adult to engage in commercial sexual activity.

### **34.07 Trafficking a Minor for Sexual Servitude**

The defendant is charged with the crime of trafficking a minor for the purpose of sexual servitude. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant knowingly [recruited; transported; transferred; harbored; received; provided; obtained; isolated; maintained; enticed] *<name of person>*; and
- (2) That *<name of person>* was a minor at the time of this offense; and
- (3) Defendant maintained or made available *<name of person>* for the purpose of engaging (him; her) in commercial sexual activities.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code §§ 133 – 135

#### ***Practice Note***

The relevant portions of the provisions of 14 V.I.C. § 133 and § 135 are as follows:

##### **§ 133. Trafficking an individual**

(a) A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

- (1) forced labor in violation of section 134; or
- (2) sexual servitude in violation of section 135.

##### **§ 135. Sexual servitude**

(a) A person commits the offense of sexual servitude if the person knowingly:

- (1) maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activities; . . . .

**Belief that the Minor was an Adult.** Under 14 V.I.C. § 135(b), it is not a defense in a prosecution under subsection (a)(1) that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

### **34.09 Patronizing A Victim of Sexual Servitude**

The defendant is charged with the crime of patronizing a victim of sexual servitude. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That on or about *<date>* in [this judicial division; *<name of judicial division>*] the defendant knowingly [gave; agreed to give; offered to give] anything of value in order to engage in commercial sexual activity with another individual; and
- (2) Defendant knew that the other individual was a victim of sexual servitude.

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 136

#### ***Practice Note***

The relevant portions of the provisions of 14 V.I.C. § 136 are as follows:

##### **§ 136. Patronizing a victim of sexual servitude**

(a) A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.

### **34.11 Patronizing A Minor for Commercial Sexual Activity**

The defendant is charged with the crime of patronizing a minor for commercial sexual activity. The People must prove beyond a reasonable doubt that on or about <date> in [this judicial division; <name of judicial division>] the defendant [gave; agreed to give; offered to give] anything of value to [a minor; another person] so that defendant [or another person] could engage in commercial sexual activity with a minor.

If you find from the evidence that the People have proved beyond a reasonable doubt the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 136

#### ***Practice Note***

The relevant portions of the provisions of 14 V.I.C. § 136 are as follows:

##### **§ 137. Patronizing a minor for commercial sexual activity**

(a) A person commits the offense of patronizing a minor for commercial sexual activity if:

(1) with the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or

(2) the person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.

### **34.13 Liability of a Business Entity**

The defendant is charged with *<name(s) of human trafficking crime(s) described in 14 V.I.C. §§ 133 through 137>* as a business entity. In order for the business to be found guilty of [that crime; those crimes], the People must prove beyond a reasonable doubt either one of the following:

- (1) That the entity knowingly engaged in conduct that constitutes human trafficking; or
- (2) That an [employee; agent] of the entity engaged in conduct that constitutes human trafficking; and
- (3) The conduct is part of a pattern of activity in violation of the law for the benefit of the business, which it knew was occurring and failed to take effective action to stop.

If you find from the evidence that the People have proved beyond a reasonable doubt either the first or the second element of the crime as described above, and also the third element of the crime as described above, then you shall find the defendant guilty.

If you find that the People have failed to prove one of these elements beyond a reasonable doubt, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 138

#### ***Practice Note***

The relevant portions of the provisions of 14 V.I.C. § 138 are as follows:

##### **§ 138. Business entity liability**

(a) A person that is a business entity may be prosecuted for an offense under sections 133 through 137 only if:

- (1) the entity knowingly engages in conduct that constitutes human trafficking; or
- (2) an employee or nonemployee agent of the entity engages in conduct that constitutes human trafficking and the conduct is part of a pattern of activity in violation of this chapter for the benefit of the entity, which the entity knew was occurring and failed to take effective action to stop.

**Penalties.** Title 14 V.I.C. § 138(b) provides that when a business entity is prosecuted for an offense under §§ 133 through 137, the court may consider the severity of the entity's conduct

and order penalties in addition to those otherwise provided for the offense, including: (1) a fine of not more than \$1,000,000 per offense; (2) disgorgement of profit from activity in violation of this chapter; and (3) debarment from government contracts.

### **34.15 Aggravating Circumstance**

**The defendant is charged with <name(s) of human trafficking crime(s) described in 14 V.I.C. §§ 133, 134, or 135] with an aggravating circumstance. In order for you to find that [this crime was; these crimes were] committed in an aggravating circumstance, the People must prove beyond a reasonable doubt that the defendant [recruited; enticed; obtained] <name(s) of person(s)>, who [is; are] the [victim; victims] of the [crime; crimes], from a shelter that serves individuals subjected to human trafficking, domestic violence, or sexual assault, runaway youth, foster children, or the homeless.**

#### **Sources & Authority**

**14 V.I. Code § 139**

#### ***Practice Note***

The relevant portions of the provisions of 14 V.I.C. § 139 are as follows:

#### **§ 139. Aggravating circumstance**

(a) An aggravating circumstance during the commission of an offense under section 133, 134, or 135 occurs when the defendant recruited, enticed, or obtained the victim of the offense from a shelter that serves individuals subjected to human trafficking, domestic violence, or sexual assault, runaway youth, foster children, or the homeless.

## Chapter 35. IDENTITY THEFT 14 V.I.C. § 2200 – 2212

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### **35.01 Identify Theft -- Definitions**

For prosecutions under the Identify Theft Prevention Act the following definitions are applicable unless the context otherwise requires:

(a) “Personal identification document” means a birth certificate, a driver’s license, a state identification card, a public, government, or private employment identification card, a Social Security card, a firearm owner's identification card, a credit card, a debit card, or a passport issued to or on behalf of a person other than the offender, or any document made or issued, or falsely purported to have been made or issued, by or under the authority of the United States Government, the Government of the Virgin Islands, or any other state political subdivision of any state or territory, or any other governmental or quasi-governmental organization that is of a type intended for the purpose of identification of an individual, or any such document made or altered in a manner that it falsely purports to have been made on behalf of or issued to another person or by the authority of one who did not give that authority.

(b) “Personal identifying information” means any of the following information:

- (1) A person's name;
- (2) A person's address;
- (3) A person's date of birth;
- (4) A person's telephone number;
- (5) A person's driver’s license number or identification card as assigned by the Virgin Islands Police Department or a similar agency of another state or territory;
- (6) A person's Social Security number;
- (7) A person's public, private, or government employer, place of employment, or employment identification number;
- (8) The maiden name of a person's mother

(9) The number assigned to a person's depository account, savings account, or brokerage account;

(10) The number assigned to a person's credit or debit card, commonly known as a "Visa Card", "Master Card", "American Express Card", "Discover Card", or other similar cards, whether issued by a financial institution, corporation, or business entity;

(11) Personal identification numbers;

(12) Electronic identification numbers;

(13) Digital signals;

(14) Any other numbers or information that can be used to access a person's financial resources, or to identify a specific individual.

(c) "Document-making implement" means any implement, impression, template, computer file, computer disc, electronic device, computer hardware, computer software, instrument, or device that is used to make a real or fictitious or fraudulent personal identification document.

## Sources & Authority

14 V.I. Code § 2201

### ***Practice Note***

The Legislature of the Virgin Islands adopted the Identity Theft Prevention Act in 2005, as Act No. 6789.

**Selections for Definition.** The text of 14 V.I.C. § 2201 is set forth in full in the above definitional Instruction. It is recommended that only those definitions explaining terms that will be used in the pending case be selected from this omnibus definitional provision to be read to the jury, to avoid confusion over issues that are not before the jurors.

## **35.03 Identify Theft (No Monetary Amount Charged)**

The defendant is charged with the crime of identity theft. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant

*\* Select element(s) charged in this case \**

... used any [personal identifying information; personal identification document] of another person to obtain [credit; money; goods; services; property] fraudulently;

... used any [personal identification information; personal identification document] of another person with intent to commit [any felony theft;



other felony violation of the laws of the Virgin Islands not involving obtaining credit, money, goods, services, or other property fraudulently];  
... [obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person with intent to [commit; aid or abet another in committing] any [felony theft; other felony violation of the laws of the Virgin Islands];  
... [used; obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person knowing that such [personal identification information; personal identification document] was [stolen; produced without lawful authority];  
... [used; transferred; possessed] document-making implements to produce false [identification; documents] with knowledge that [it; they] would be used by [(him; her); another person] to commit any [felony theft; *<specify other felony violation of law>*];

and

**(2) Defendant acted knowingly, considering all circumstances surrounding the use of the other person's identifying [information; document]; and**

**(3) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

14 V.I. Code § 2202(a)-(c)

### ***Practice Note***

The text of 14 V.I.C. § 2202 provides in relevant part as follows:

#### **§ 2202. Identity theft**

(a) A person commits the offense of identity theft when he or she knowingly:

(1) uses any personal identifying information or personal identification document of another person to obtain credit, money, goods, services, or other property fraudulently, or

(2) uses any personal identification information or personal identification document of another with intent to commit any felony theft or other felony violation of the laws of the Virgin Islands not set forth in paragraph (1) of this subsection (a), or

(3) obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another with intent to commit or to aid or abet another in committing any felony theft or other felony violation of the laws of the Virgin Islands, or

(4) uses, obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority, or

(5) uses, transfers, or possesses document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony theft or other felony violation of law.

(b) Knowledge shall be determined by an evaluation of all circumstances surrounding the use of the other person's identifying information or document.

(c) When a charge of identity theft of credit, money, goods, services, or other property exceeding a specified value is brought, the value of the credit, money, goods, services, or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.

\* \* \* \*

### **35.05 Identify Theft (Value Not Exceeding \$300)**

The defendant is charged with the crime of identity theft. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... used any [personal identifying information; personal identification document] of another person to obtain [credit; money; goods; services; property] fraudulently;

... used any [personal identification information; personal identification document] of another person with intent to commit any [felony theft;

other felony violation of the laws of the Virgin Islands not involving obtaining credit, money, goods, services, or other property fraudulently];  
... [obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person with intent to [commit; aid or abet another in committing] any [felony theft; other felony violation of the laws of the Virgin Islands];  
... [used; obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person knowing that such [personal identification information; personal identification document] was [stolen; produced without lawful authority];  
... [used; transferred; possessed] document-making implements to produce false [identification; documents] with knowledge that [it; they] would be used by [(him; her); another person] to commit any [felony theft; <specify other felony violation of law>];

and

**(2) Defendant acted knowingly, considering all circumstances surrounding the use of the other person's identifying information or document; and**

**(3) Defendant obtained credit, money, goods, services, or other property not exceeding \$300; and**

**(4) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

14 V.I. Code § 2202(a)-(c)

### ***Practice Note***

The text of 14 V.I.C. § 2202 provides in relevant part as follows:

#### **§ 2202. Identity theft**

(a) A person commits the offense of identity theft when he or she knowingly:

(1) uses any personal identifying information or personal identification document of another person to obtain credit, money, goods, services, or other property fraudulently, or

(2) uses any personal identification information or personal identification document of another with intent to commit any felony theft or other felony violation of the laws of the Virgin Islands not set forth in paragraph (1) of this subsection (a), or

(3) obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another with intent to commit or to aid or abet another in committing any felony theft or other felony violation of the laws of the Virgin Islands, or

(4) uses, obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority, or

(5) uses, transfers, or possesses document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony theft or other felony violation of law.

(b) Knowledge shall be determined by an evaluation of all circumstances surrounding the use of the other person's identifying information or document.

(c) When a charge of identity theft of credit, money, goods, services, or other property exceeding a specified value is brought, the value of the credit, money, goods, services, or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.

### **35.07 Identify Theft (Value Exceeding \$300 but Not Exceeding \$2,000)**

The defendant is charged with the crime of identity theft. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

- ... used any [personal identifying information; personal identification document] of another person to obtain [credit; money; goods; services; property] fraudulently;
- ... used any [personal identification information; personal identification document] of another person with intent to commit any [felony theft; other felony violation of the laws of the Virgin Islands not involving obtaining credit, money, goods, services, or other property fraudulently];
- ... [obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person with intent to [commit; aid or abet another in committing] any [felony theft; other felony violation of the laws of the Virgin Islands];
- ... [used; obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person knowing that such [personal identification information; personal identification document] was [stolen; produced without lawful authority];
- ... [used; transferred; possessed] document-making implements to produce false [identification; documents] with knowledge that [it; they] would be used by [(him; her); another person] to commit any [felony theft; *<specify other felony violation of law>*];

**and**

**(2) Defendant acted knowingly, considering all circumstances surrounding the use of the other person's identifying information or document; and**

**(3) Defendant obtained [credit; money; goods; services; property] exceeding \$300 in value but not exceeding \$2,000; and**

**(4) Defendant's conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**14 V.I. Code § 2202(a)-(c)**

### ***Practice Note***

The text of 14 V.I.C. § 2202 provides in relevant part as follows:

#### **§ § 2202. Identity theft**

(a) A person commits the offense of identity theft when he or she knowingly:

(1) uses any personal identifying information or personal identification document of another person to obtain credit, money, goods, services, or other property fraudulently, or

(2) uses any personal identification information or personal identification document of another with intent to commit any felony theft or other felony violation of the laws of the Virgin Islands not set forth in paragraph (1) of this subsection (a), or

(3) obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another with intent to commit or to aid or abet another in committing any felony theft or other felony violation of the laws of the Virgin Islands, or

(4) uses, obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority, or

(5) uses, transfers, or possesses document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony theft or other felony violation of law.

(b) Knowledge shall be determined by an evaluation of all circumstances surrounding the use of the other person's identifying information or document.

(c) When a charge of identity theft of credit, money, goods, services, or other property exceeding a specified value is brought, the value of the credit, money, goods, services, or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.

### **35.09 Identify Theft (Value Exceeding \$2,000 but Not Exceeding \$10,000)**

The defendant is charged with the crime of identity theft. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

- ... used any [personal identifying information; personal identification document] of another person to obtain [credit; money; goods; services; property] fraudulently;
- ... used any [personal identification information; personal identification document] of another person with intent to commit any [felony theft; felony violation of the laws of the Virgin Islands not involving obtaining credit, money, goods, services, or other property fraudulently];
- ... [obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person with intent to [commit; aid or abet another in committing] any [felony theft; other felony violation of the laws of the Virgin Islands];
- ... [used; obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person knowing that such [personal identification information; personal identification document] was [stolen; produced without lawful authority];
- ... used; transferred; possessed] document-making implements to produce false [identification; documents] with knowledge that [it; they] would be used by [(him; her); another person] to commit any [felony theft; *<specify other felony violation of law>*];

**and**

**(2) Defendant acted knowingly, considering all circumstances surrounding the use of the other person's identifying information or document; and**

**(3) Defendant obtained [credit; money; goods; services; property] exceeding \$2,000 in value but not exceeding \$10,000; and**

**(4) Defendant's conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**14 V.I. Code § 2202(a)-(c)**

### ***Practice Note***

The text of 14 V.I.C. § 2202 provides in relevant part as follows:

#### **§ § 2202. Identity theft**

(a) A person commits the offense of identity theft when he or she knowingly:

(1) uses any personal identifying information or personal identification document of another person to obtain credit, money, goods, services, or other property fraudulently, or

(2) uses any personal identification information or personal identification document of another with intent to commit any felony theft or other felony violation of the laws of the Virgin Islands not set forth in paragraph (1) of this subsection (a), or

(3) obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another with intent to commit or to aid or abet another in committing any felony theft or other felony violation of the laws of the Virgin Islands, or

(4) uses, obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority, or

(5) uses, transfers, or possesses document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony theft or other felony violation of law.

(b) Knowledge shall be determined by an evaluation of all circumstances surrounding the use of the other person's identifying information or document.

(c) When a charge of identity theft of credit, money, goods, services, or other property exceeding a specified value is brought, the value of the credit, money, goods, services, or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.



### **35.09 Identify Theft (Value Exceeding \$10,000 but Not Exceeding \$100,000)**

The defendant is charged with the crime of identity theft. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

- ... used any [personal identifying information; personal identification document] of another person to obtain [credit; money; goods; services; other property] fraudulently;
- ... used any [personal identification information; personal identification document] of another person with intent to commit any [felony theft; other felony violation of the laws of the Virgin Islands not involving obtaining credit, money, goods, services, or other property fraudulently];
- ... [obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person with intent to [commit; aid or abet another in committing] any [felony theft; other felony violation of the laws of the Virgin Islands];
- ... [used; obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person knowing that such [personal identification information; personal identification document] was [stolen; produced without lawful authority];
- ... [used; transferred; possessed] document-making implements to produce false [identification; documents] with knowledge that [it; they] would be used by [(him; her); another person] to commit any [felony theft; *<specify other felony violation of law>*];

**and**

**(2) Defendant acted knowingly, considering all circumstances surrounding the use of the other person's identifying information or document; and**

**(3) Defendant obtained [credit; money; goods; services; property] exceeding \$10,000 in value but not exceeding \$100,000; and**

**(4) Defendant's conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 2202(a)-(c)**

### ***Practice Note***

The text of 14 V.I.C. § 2202 provides in relevant part as follows:

#### **§ § 2202. Identity theft**

(a) A person commits the offense of identity theft when he or she knowingly:

(1) uses any personal identifying information or personal identification document of another person to obtain credit, money, goods, services, or other property fraudulently, or

(2) uses any personal identification information or personal identification document of another with intent to commit any felony theft or other felony violation of the laws of the Virgin Islands not set forth in paragraph (1) of this subsection (a), or

(3) obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another with intent to commit or to aid or abet another in committing any felony theft or other felony violation of the laws of the Virgin Islands, or

(4) uses, obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority, or

(5) uses, transfers, or possesses document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony theft or other felony violation of law.

(b) Knowledge shall be determined by an evaluation of all circumstances surrounding the use of the other person's identifying information or document.

(c) When a charge of identity theft of credit, money, goods, services, or other property exceeding a specified value is brought, the value of the credit, money, goods, services, or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.

### **35.11 Identify Theft (Value Exceeding \$100,000)**

The defendant is charged with the crime of identity theft. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

- ... used any [personal identifying information; personal identification document] of another person to obtain [credit; money; goods; services; property] fraudulently;
- ... used any [personal identification information; personal identification document] of another person with intent to commit any [felony theft; other felony violation of the laws of the Virgin Islands not involving obtaining credit, money, goods, services, or other property fraudulently];
- ... [obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person with intent to [commit; aid or abet another in committing] any [felony theft; other felony violation of the laws of the Virgin Islands];
- ... [used; obtained; recorded; possessed; sold; transferred; purchased; manufactured] any [personal identification information; personal identification document] of another person knowing that such [personal identification information; personal identification document] was [stolen; produced without lawful authority];
- ... [used; transferred; possessed] document-making implements to produce false [identification; documents] with knowledge that [it; they] would be used by [(him; her); another person] to commit any [felony theft; *<specify other felony violation of law>*];

and

**(2) Defendant acted knowingly, considering all circumstances surrounding the use of the other person's identifying information or document; and**

**(3) Defendant obtained [credit; money; goods; services; property] exceeding \$100,000 in value; and**

**(4) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 2202(a)-(c)**

### ***Practice Note***

The text of 14 V.I.C. § 2202 provides in relevant part as follows:

#### **§ § 2202. Identity theft**

(a) A person commits the offense of identity theft when he or she knowingly:

(1) uses any personal identifying information or personal identification document of another person to obtain credit, money, goods, services, or other property fraudulently, or

(2) uses any personal identification information or personal identification document of another with intent to commit any felony theft or other felony violation of the laws of the Virgin Islands not set forth in paragraph (1) of this subsection (a), or

(3) obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another with intent to commit or to aid or abet another in committing any felony theft or other felony violation of the laws of the Virgin Islands, or

(4) uses, obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority, or

(5) uses, transfers, or possesses document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony theft or other felony violation of law.

(b) Knowledge shall be determined by an evaluation of all circumstances surrounding the use of the other person's identifying information or document.

(c) When a charge of identity theft of credit, money, goods, services, or other property exceeding a specified value is brought, the value of the credit, money, goods, services, or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.

### **35.11 Aggravated Identify Theft**

The defendant is charged with the crime of aggravated identity theft. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) You have found that defendant has committed the crime of identity theft under the Instructions I have given you on that charge; and

(2) The crime was committed against

*\* Select element(s) charged in this case \**

... a person who is 60 years of age or older;

... a dependent adult, meaning any person between the ages of 18 to 59 who has physical or mental limitations that restrict the person's ability to carry out normal activities or to protect a persons' rights;

... a person who is less than 18 years of age;

and

(3) Defendant acted knowingly, considering all circumstances surrounding the use of the other person's identifying information or document; and

(4) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 2203

#### ***Practice Note***

The text of 14 V.I.C. § 2203 provides in relevant part as follows:

##### **§ § 2203. Aggravated identity theft**

A person commits the offense of aggravated identity theft when the person commits the offense of identity theft as; set forth in section 2202, subsection (a) against:

- (1) A person who is 60 years of age or older;
- (2) A dependent adult, as defined in 34 V.I.C. § 452; or
- (3) A person who is less than 18 years of age.

(b) Knowledge shall be determined by an evaluation of all circumstances surrounding the use of the other person's identifying information or document.

(c) A defense to aggravated identity theft:

(1) as set forth in subsection (a)(1) of this section does not exist merely because the accused reasonably believed the victim to be a person less than 60 years of age; or

(2) as set forth in subsection (a)(2) of this section does not exist merely because the accused reasonably believed that the victim was not a dependent adult; or

(3) as set forth in subsection (a)(3) does not exist merely because the accused reasonably believed the victim to be a person over the age of 18.

(d) Sentence. Aggravated identity theft of any amount is a felony punishable by a fine up to \$10,000 and by a term of imprisonment of up to 15 years for the first conviction:

A person who has been previously convicted of aggravated identity theft, who is convicted of a second or subsequent offense of aggravated identity theft, shall be punished by a term of imprisonment of not less than 6 years but not more than 30 years.

**“Dependent Adult” Definition.** Section 2203 defines “dependent adult” by cross reference to 34 V.I.C. § 452, which is the source of the meaning of that term given in Element (2) of the above Instruction, adopted here verbatim.

**No “Reasonable Belief” Defenses.** Note that 14 V.I.C. § 2203(c) expressly provides that it is *not* a defense to aggravated identity theft that the accused reasonably believed the victim to be a person less than 60 years of age, or was not a dependent adult, or that the victim was a person over the age of 18.

## Chapter 36. INCEST 14 V.I.C. § 961

36.01 Incest ..... 415

### 36.01 Incest

The defendant is charged with the crime of incest. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant knew that (he; she) and <name of person> are relatives because <name of person> is the defendant's [grandmother; grandfather's wife; wife's grandmother; father's sister; mother's sister; mother; stepmother; wife's mother; daughter; wife's daughter; son's wife; sister; son's daughter; daughter's daughter; son's son's wife; daughter's son's wife; wife's son's daughter; wife's daughter's daughter; brother's daughter; sister's daughter];
- (2) Defendant knowingly [married; fornicated; had sexual intercourse; committed adultery] with <name of person>; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### Sources & Authority

14 V.I. Code § 961; 16 V.I.C. § 1  
*Archibald v. People*, 70 V.I. 975 (V.I. 2019)

#### Practice Note

Section 961 of Title 14 of the Virgin Islands Code, the statute criminalizing incest in the Virgin Islands, provides:

Persons being within the degrees of consanguinity within which marriages are declared by law to be void, who knowingly intermarry with each other, or who commit

fornication or adultery with each other shall each be imprisoned for not more than 10 years.

Title 16 V.I.C. § 1, the domestic relations statute governing marriages that are void as a matter of law, provides:

**§ 1. Void marriages**

(a) A marriage is prohibited and void from the beginning, without being so decreed and its nullity may be shown in any collateral proceeding, when it is between—

(1) a man and his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter or sister's daughter;

(2) a woman and her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's husband, husband's son's son, husband's daughter's son, brother's son or sister's son; or

(3) any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce.

(b) Any of such marriages may also be declared to have been null and void by judicial decree.

**Female Defendant.** Note that, under the statutes, if the defendant is female, the list of prohibited forms of consanguinity should be replaced with a statement that the named sexual partner is the defendant's grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's son, husband's daughter's son, brother's son or sister's son.

**Fornication.** In *Archibald*, the Court noted that the defendant having had sexual relations with the victim, and fathering a child with her, was sufficient to permit the jury to find beyond a reasonable doubt that he was guilty of incest charged under § 961. 70 V.I. at 988. No other Virgin Islands interpretive case law has been located by the Committee, but Black's Law Dictionary defines fornication to mean "[v]oluntary sexual intercourse between two unmarried persons." The definitions contained in 14 V.I.C. § 1699, which are only directly applicable in prosecution for rape and related offenses,



define “sexual intercourse” to mean “vaginal intercourse or any insertion, however slight, of a hand, finger or object into the vagina, vulva, or labia, excluding such insertion for medical treatment or examination,” § 1699(e), and state that sexual intercourse includes sexual acts that involve “genital to genital, oral to genital, anal to genital, or oral-anal [contact], whether between persons of the same or opposite sex.” § 1699(c).

## **Chapter 37. INDECENCY & OBSCENITY 14 V.I.C. § 1021-27, 487-90**

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### **37.01 Indecency -- Definitions**

For prosecutions under the Chapter 51 of Title I of the Virgin Islands Code, the following definitions are applicable:

(a) “Obscene” means that to the average person, applying contemporary standards, the predominant appeal of the matter, taken as a whole, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters and is matter which is utterly without redeeming social importance.

(b) “Matter” means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial

representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical production or any other articles, equipment, machines or materials.

(c) “Person” means any individual, partnership, firm, association, corporation or other legal entity.

(d) “Distribute” means to transfer possession of, whether with or without consideration.

(e) “Knowingly” means having knowledge that the matter is obscene.

### **Sources & Authority**

14 V.I. Code § 2021

### ***Practice Note***

**Selections for Definition.** The text of 14 V.I.C. § 1021 is set forth in full in the above definitional Instruction. It is recommended that only those definitions explaining terms that will be used in the pending case be selected from this omnibus definitional provision to be read to the jury, to avoid confusion over issues that are not before the jurors.

### **37.03 Obscenity Distribution or Possession (Misdemeanor)**

The defendant is charged with the crime of obscenity distribution or possession. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [sent; caused to be sent; brought; caused to be brought], into the Virgin Islands for sale or distribution, any obscene matter;

... in the Virgin Islands [prepared; published; printed; exhibited; distributed; offered to distribute] any obscene matter;

... had in his possession with intent to [distribute; exhibit; offer to distribute], any obscene matter;

**and**

**(2) Defendant acted knowingly; and**

**(3) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1024(a)

#### ***Practice Note***

The text of 14 V.I.C. § 1024(a) provides in relevant part as follows:

**§ § 1024. Distribution; printing, exhibiting, distributing or possessing**

(a) Every person who knowingly, sends or causes to be sent, or brings or causes to be brought, into the Virgin Islands for sale or distribution, or in the Virgin Islands prepares, publishes, prints, exhibits, distributes, or offers to distribute, or has in his possession with intent to distribute or to exhibit or offer to distribute, any obscene matter is guilty of a misdemeanor.

Note that § 1024(c) provides that the crime relating to exhibition of, or the possession with intent to exhibit, any obscene matter will not apply to a motion picture operator, projectionist or

salesperson who is employed by a person licensed in accordance with Virgin Islands law and who is acting within the scope of his employment, so long as he or she has no financial interest in the place wherein he is so employed.

### **37.05 Obscenity Distribution or Possession (Felony)**

The defendant is charged with the crime of [distribution; possession] of obscenity depicting a minor. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [sent; caused to be sent; brought; caused to be brought] into the Virgin Islands for [sale; distribution]

... in the Virgin Islands [possessed; prepared; published; printed] with the intent to [distribute; exhibit] to others for commercial consideration

... [offered to distribute; distributed; exhibited to others for commercial consideration]

**any obscene matter, knowing that such matter depicts a minor engaging in or simulating** [sexual intercourse; masturbation; anal-oral copulation; sodomy; bestiality; oral copulation; sexual sadism; sexual masochism; any lewd or lascivious sexual activity; excretory functions performed in a lewd or lascivious manner]; **and**

**(2) Defendant acted knowingly; and**

**(3) Defendant's conduct took place on or about <date> in** [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1024(b)

#### ***Practice Note***

The text of 14 V.I.C. § 1024(b) provides in relevant part as follows:

**§ § 1024. Distribution; printing, exhibiting, distributing or possessing \* \* \* \* \***

(b) Every person who (i) sends or causes to be sent, or brings or causes to be brought into the Virgin Islands for sale or distribution, or (ii) in the Virgin Islands possesses, prepares, publishes or prints, with the intent to distribute or to exhibit to others for commercial consideration, or (iii) who offers to distribute, distributes or exhibits to others for commercial consideration, any obscene matter, knowing that such matter depicts a minor engaging in or simulating sexual intercourse, masturbation, anal-oral copulation, sodomy, bestiality, oral copulation, sexual sadism, sexual masochism, any lewd or lascivious sexual activity, or excretory functions performed in a lewd or lascivious manner is guilty of a felony and shall be fined not less than \$25,000 and not more than \$50,000 or imprisoned not more than three years, or both.

Note that § 1024(c) provides that the crime relating to exhibition of, or the possession with intent to exhibit, any obscene matter will not apply to a motion picture operator, projectionist or salesperson who is employed by a person licensed in accordance with Virgin Islands law and who is acting within the scope of his employment, so long as he or she has no financial interest in the place wherein he is so employed.

### **37.07 Distribution or Exhibition of Obscenity to a Minor**

**The defendant is charged with the crime of [distribution; exhibition] of obscenity to a minor. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant knew or reasonably should have known that <name of victim> was a minor under 18 years of age; and**

**(2) Defendant knowingly [distributed; sent; caused to be sent; exhibited; offered to distribute] any obscene matter to <name of victim>;**

**(3) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

14 V.I. Code § 1025

#### ***Practice Note***

The text of 14 V.I.C. § 1025(a) provides as follows:

**§ 1025. Distribution or exhibition to minor under 18**

(a) Every person who, with knowledge that a person is a minor under 18 years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under 18 years of age, knowingly distributes to, or sends or causes to be sent to, or exhibits to, or offers to distribute any obscene matter to a minor under 18 years of age, is guilty of a misdemeanor. \* \* \* \*

Note that subsection (b) of § 1025 provides that any parent, guardian or adult who in the company of a minor under his or her control permits, allows or otherwise causes the minor to enter any premises engaged in any activities prohibited by this section, is guilty of a misdemeanor.

**37.09 Employing a Minor to Perform Prohibited Acts**

The defendant is charged with the crime of employing a minor to perform prohibited acts. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [knew; reasonably should have known] that *<name of victim>* was a minor;

... was a [parent; guardian] who had a minor under (his; her) control;

**and**

**(2) Defendant knowingly** [permitted; promoted; employed; used; persuaded; induced; coerced] *<name of victim>* **to** [engage in; assist others to engage in] **either posing or modeling alone or with others for purposes of preparing a** [film; photograph; negative; slide; live performance] **involving sexual conduct by a minor, alone or with** [other persons; animals], **for commercial purposes.**

**(3) Defendant's conduct took place on or about** *<date>* **in** [this judicial division; *<name of judicial division>*].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## Sources & Authority

14 V.I. Code § 1025

### ***Practice Note***

The text of 14 V.I.C. § 1025(a) provides as follows:

#### **§ 1027. Employment of minor to perform prohibited acts**

(a) Every person who (i) with knowledge that a person is a minor, or (ii) while in possession of such facts that he should reasonably know that such person is a minor, or (iii) any parent or guardian who has a minor under his or her control, knowingly permits, promotes, employs, uses, persuades, induces, or coerces such minor to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving sexual conduct by a minor, alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be fined not less than \$50,000 and be imprisoned for not less than three years and not more than six years.

(b) As used in subsection (a) of this section, “sexual conduct” means any of the following, whether actual or simulated: sexual intercourse, oral copulation, sodomy, anal-oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, any lewd or lascivious sexual activity, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being actual sexual conduct.

### **37.09 Definition of “Sexual Conduct” for § 1027 Prosecutions**

**As used in the crime of employing a minor to perform prohibited acts, “sexual conduct” means any of the following, whether actual or simulated: sexual intercourse, oral copulation, sodomy, anal-oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, any lewd or lascivious sexual activity, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being actual sexual conduct.**



## Sources & Authority

14 V.I. Code § 1027

### ***Practice Note***

The text of § 1027(b) is repeated verbatim in this definitional Instruction. Irrelevant portions of this definition should be deleted so that the categories covered relate to the facts of the case being presented to the jury, so their understanding is clearer and on point.

### **37.11 Inducing a Minor to Engage in Sexually Explicit Conduct to Produce Visual Medium Depicting Such Conduct or a Performance**

The defendant is charged with the crime of inducing a minor to engage in sexually explicit conduct for purposes of producing a visual medium depicting [such conduct; a sexual performance]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant knowingly**

*\* Select element(s) charged in this case \**

... [employed; used; persuaded; induced; enticed; coerced] any minor;  
... assisted any other person to [employ; use; persuade; induce; entice; coerce] any minor

**to engage in**

*\* Select element(s) charged in this case \**

... any sexually explicit conduct for the purpose of producing [any visual medium depicting such conduct; any performance];  
... [sexual intercourse; sodomy];  
... [a sexual performance; an obscene sexual performance; obscene sexual conduct] that is calculated to promote the violation of the law and the general corruption of morals;

**and**

**(2) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1025**

### ***Practice Note***

The Legislature adopted in 2010 the Computer Pornography and Child Exploitation Prevention Act, Act No. 7155.

The text of 14 V.I.C. § 488 provides in relevant part as follows:

**§ 488. Visual medium depicting sexually explicit conduct, prohibitions; penalties**

(a)

(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor or assist any other person to employ, use, persuade, induce, entice, or coerce any minor to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

\* \* \* \*

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance or to engage in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or obscene sexual conduct that is calculated to promote the violation of the law and the general corruption of morals.

\* \* \* \*

(b) Any person who violates the provision of this section is guilty of a felony punishable upon conviction by imprisonment for not less than five years or more than 20 years and by a fine of not more than \$100,000.

### **37.13 Parent or Guardian Permitting Minor to Engage in Sexually Explicit Conduct to Produce Visual Medium Depicting Such Conduct**

The defendant is charged with the crime of being a [parent; guardian] and permitting a minor to engage in [sexually explicit conduct for purposes of producing a visual medium depicting such conduct; a performance of sexual acts]. **The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant was a [parent of <name of victim>; legal guardian of <name of victim>; person having custody or control of <name of victim>], who was a minor; and**

**(2) Defendant knowingly permitted <name of victim> to [engage in; assist any other person to engage in]**

*\* Select element(s) charged in this case \**

... sexually explicit conduct for the purpose of producing any visual medium depicting such conduct;

... sexually explicit conduct for the purpose of any performance;

... sexual intercourse; sodomy;

... a [sexual performance; an obscene sexual performance; obscene sexual conduct that is calculated to promote the violation of the law and the general corruption of morals];

and

**(3) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 488

#### ***Practice Note***

The Legislature adopted in 2010 the Computer Pornography and Child Exploitation Prevention Act, Act No. 7155.

The text of 14 V.I.C. § 488 provides in relevant part as follows:

**§ 488. Visual medium depicting sexually explicit conduct, prohibitions; penalties**

(a)

\* \* \* \*

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

\* \* \* \*

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any another person to engage in sexually explicit conduct for the purpose of any performance or to engage in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or obscene sexual conduct that is calculated to promote the violation of the law and the general corruption of morals.

(b) Any person who violates the provision of this section is guilty of a felony punishable upon conviction by imprisonment for not less than five years or more than 20 years and by a fine of not more than \$100,000.

### **37.15 Possession or Distribution of Visual Medium Displaying Minor Engaged in Sexually Explicit Conduct**

The defendant is charged with the crime of [possession; distribution] of visual media displaying a minor engaged in sexually explicit conduct. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant knowingly**

*\* Select element(s) charged in this case \**

- ... [created; reproduced; published; promoted; sold; distributed; gave; exhibited] any visual medium that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct;
- ... possessed with intent to [sell; distribute] any visual medium that depicts [a minor; a portion of a minor's body] engaged in any sexually explicit conduct;

**and**

**(2) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

14 V.I. Code § 488(a) (5)

#### ***Practice Note***

The Legislature adopted in 2010 the Computer Pornography and Child Exploitation Prevention Act, Act No. 7155.

The text of 14 V.I.C. § 488(a)(5) provides as follows:

**§ 488. Visual medium depicting sexually explicit conduct, prohibitions; penalties**

(a) \* \* \* \*

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

### **37.17 Promoting Medium Displaying Minor Engaged in Sexually Explicit Conduct**

The defendant is charged with the crime of promoting visual media displaying a minor engaged in sexually explicit conduct. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant knowingly** [advertised; sold; purchased; bartered; exchanged] **any** [material; information] **whether it be printed, verbal, audio or digital which provides information as to where any visual medium which depicts** [a minor; a portion of a minor's body] **engaged in any sexually explicit conduct can be found or purchased;**

**(2) Defendant's conduct took place on or about** *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 488(a)(6)

#### ***Practice Note***

The Legislature adopted in 2010 the Computer Pornography and Child Exploitation Prevention Act, Act No. 7155.

The text of 14 V.I.C. § 488(a)(6) provides as follows:

**§ 488. Visual medium depicting sexually explicit conduct, prohibitions; penalties**

(a) \* \* \* \*

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any material or information whether it be printed, verbal, audio or digital which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.

### **37.17 Importing Material Displaying Minor Engaged in Sexually Explicit Conduct**

The defendant is charged with the crime of bringing into the Virgin Islands material depicting a minor engaged in sexually explicit conduct. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant knowingly [brought; caused to be brought] into the Virgin Islands any material that depicts [a minor; a portion of a minor's body] engaged in any sexually explicit conduct.

(2) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 488(a)(7)

#### ***Practice Note***

The Legislature adopted in 2010 the Computer Pornography and Child Exploitation Prevention Act, Act No. 7155.

The text of 14 V.I.C. § 488(a)(7) provides as follows:

**§ 488. Visual medium depicting sexually explicit conduct, prohibitions; penalties**

(a) \* \* \* \*

(7) It is unlawful for any person knowingly to bring or cause to be brought into the Virgin Islands any material that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

### **37.19 Possession or Control of Material Depicting Minor Engaged in Sexually Explicit Conduct**

The defendant is charged with the crime of [possessing; controlling] material that depicts a minor engaged in sexually explicit conduct. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant knowingly [possessed; controlled] any material that depicts [a minor; a portion of a minor's body] engaged in any sexually explicit conduct; and
- (2) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 488(a)(8)

#### ***Practice Note***

The Legislature adopted in 2010 the Computer Pornography and Child Exploitation Prevention Act, Act No. 7155.

The text of 14 V.I.C. § 488(a)(8) provides as follows:

**§ 488. Visual medium depicting sexually explicit conduct, prohibitions; penalties**

(a) \* \* \* \*

(8) It is unlawful for any person knowingly to possess or control any material that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

### **37.21 Computer Pornography – Definitions.**

For the crime of computer pornography, the following definitions apply:

- (1) “Minor” means any person under the age of 18 years.
- (2) “Identifiable minor” means an individual:
  - (A) Who was a minor at the time the visual depiction was created, adapted, or modified or whose image as a minor was used in creating, adapting, or modifying the visual depiction; and



- (B) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature or by electronic or scientific means as may be available.
- (C) The term may not be construed to require proof of the actual identity of the minor.
- (3) "Visual depiction" means any image and includes photographs, undeveloped film and video tape and data stored on computer disk or by electronic means which is capable of conversion into a visual image or which has been created, adapted, or modified to show an identifiable minor engaged in sexually explicit conduct.
- (4) "Sexually explicit conduct" means actual or simulated:
  - (A) Sexual intercourse;
  - (B) Deviate sexual activity;
  - (C) Bestiality;
  - (D) Masturbation;
  - (E) Sadomasochistic abuse for the purpose of sexual stimulation; or
  - (F) Lewd exhibition of the:
    - (i) Genitals or pubic area of any person;
    - (ii) Breast of a female; or
    - (iii) Buttocks of a minor.
- (5) "Visual medium" means any material that records, holds and communicates information in a primarily visual manner

### **Sources & Authority**

14 V.I. Code § 489(a))

### ***Practice Note***

The definitions in this Instruction set forth verbatim the definitions enacted by the Legislature in § 489(a), to be used in prosecutions for computer pornography under § 489(b). It is suggested that only those definitions that pertain to items that will be involved in the pending trial be provided to the jury, so that the jury is not confused with irrelevant concepts.

### **37.23 Computer Pornography**

The defendant is charged with the crime of computer pornography. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant** [intentionally; willfully]

*\* Select element(s) charged in this case \**

... [compiled; entered into; transmitted] by means of computer;

... [made; printed; published; reproduced] by other computerized means;

... [caused; allowed to be entered into; allowed to be transmitted by] means of computer;

... [bought; sold; received; exchanged; disseminated]

**any** [notice; statement; advertisement]; minor's [name; telephone number; place of residence; physical characteristics; other descriptive or identifying information] **for the purpose of** [offering; soliciting] [sexual conduct of or with a minor; the visual depiction of sexual conduct of or with a minor]; **and**

**(2) Defendant's conduct took place on or about** <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 489(b)

#### ***Practice Note***

The text of 14 V.I.C. § 489(b) provides as follows:

#### **§ 489 Computer Pornography**

(1) A person commits the offense of computer pornography if the person intentionally or willfully:

(A) Compiles, enters into, or transmits by means of computer;

(B) Makes, prints, publishes, or reproduces by other computerized means;

(C) Causes or allows to be entered into or transmitted by means of computer; or

(D) Buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with a minor or the visual depiction of such conduct.

**Legislative Construction.** It will be noted that the layout of this Code section is confusing. Subparts (A), (B) and (C) have essentially no meaning if not connected to the notices, address or descriptive information mentioned in the last lines of subpart (D). The Committee recommends, therefore, that the Instruction for this offense collect the conduct described in (A), (B), (C) and the first seven words of subpart (D) and make it clear that what follows is applicable to all four forms of computer activity. That is the structure Instruction 27.23 uses, placing in brackets [*compiled, entered into, or transmitted by means of 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*] in options 1A through 1D for editing and selection by counsel and the court so that the Instruction addresses the version charged in the actual case, and then following that choice with the prohibited forms of information themselves in options 2A and 2B, likewise for editing and selection by counsel and the court: **(any notice, statement, or advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with a minor or the visual depiction of such conduct).**

### **37.25 Obscene Internet Contact with a Minor**

The defendant is charged with the crime of obscene internet contact with a minor. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant had contact with someone (he; she) [knew; believed] to be a minor using a computer on-line service or an Internet service, including but not limited to a local electronic bulletin board service, an Internet chat room, e-mail, or an on-line messaging service; and**

**(2) Defendant's contact involved any matter containing explicit [verbal descriptions; narrative accounts] of [sexually explicit nudity; sexual conduct; sexual excitement; sadomasochistic abuse] that is intended to arouse or satisfy the sexual desire of either the minor or the defendant; and**

**(3) Defendant's conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 490**

### ***Practice Note***

The text of 14 V.I.C. § 490(b) provides as follows:

**§ 490. Obscene Internet contact with a minor**

\* \* \* \*

(b) A person commits the offense of obscene Internet contact with a minor if the person has contact with someone the person knows to be a minor or with someone the person believes to be a minor via a computer on-line service or Internet service, including a local bulletin board service, Internet chat room, e-mail, or on-line messaging service, and the contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the minor or the person, except that no conviction may be had for a violation of this subsection on the unsupported testimony of a minor.

(c) \* \* \* \*

(3) The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this chapter does not constitute a defense to prosecution under this section.

(4) A person is subject to prosecution in the Virgin Islands pursuant to the Revised Organic Act of the Virgin Islands, section 21(b) relating to jurisdiction over crimes and persons charged with commission of crimes generally, for any conduct made unlawful by this section which the person engages in while either within or outside of the Virgin Islands if, by such conduct, the person commits a violation of this section which involves a minor who resides in the Virgin Islands or another person believed by such person to be a minor residing in the Virgin Islands.

**Unsupported Testimony of a Minor.** Note that § 490(a) expressly states that no conviction may be had for a violation of this subsection on the unsupported testimony of a minor.

**Law Enforcement Officers Participating.** Subsection 490(c)(3) expressly states that the sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this chapter does not constitute a defense to prosecution under this section.

**Territorial Reach Where Minor Thought to Reside in the Virgin Islands.** Subsection 490(c)(4) provides that a person is subject to prosecution in the Virgin Islands pursuant to the Revised Organic Act of the Virgin Islands, § 21(b) relating to jurisdiction over crimes and persons charged with commission of crimes generally, for any conduct made unlawful by this section which the person engages in while either within or outside of the Virgin Islands if, by such conduct, the person commits a violation of this section which involves a minor who resides in the Virgin Islands or another person believed by such person to be a minor residing in the Virgin Islands.

### **37.27 Solicitation of a Minor to Commit an Illegal Sexual Act**

The defendant is charged with the crime of using a computer service to solicit a minor to commit an illegal sexual act. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant used a computer on-line service or an Internet service, including but not limited to an electronic local bulletin board service, an Internet chat room, e-mail, or an on-line messaging service to**

*\* Select element(s) charged in this case \**

... [seduce; solicit; lure; entice];

... attempt to [seduce; solicit; lure; entice]

**a [minor; person defendant believed to be a minor], to**

*\* Select element(s) charged in this case \**

... commit any *<name of illegal act proscribed by §§ 488, 489 and 490 of Title 14, Virgin Islands Code>*;

... engage in any conduct that by its nature is an unlawful sexual offense against a minor;

**and**

**(2) Defendant acted intentionally and willfully; and**

**(3) Defendant's conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**14 V.I. Code § 490(a)**

### ***Practice Note***

The text of 14 V.I.C. § 490(a) provides as follows:

#### **§ 490. Obscene Internet contact with a minor**

(a) It is unlawful for any person intentionally or willfully to use a computer on-line service or Internet service, including a local bulletin board service, Internet chat room, e-mail, or on-line messaging service to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a minor or another person believed by such person to be a minor, to commit any illegal act described in sections 488, 489 and 490 of this chapter or to engage in any conduct that by its nature is an unlawful sexual offense against a minor.

**Territorial Reach Where Minor Thought to Reside in the Virgin Islands.** Subsection 490(c)(4) provides that a person is subject to prosecution in the Virgin Islands pursuant to the Revised Organic Act of the Virgin Islands, § 21(b) relating to jurisdiction over crimes and persons charged with commission of crimes generally, for any conduct made unlawful by this section which the person engages in while either within or outside of the Virgin Islands if, by such conduct, the person commits a violation of this section which involves a minor who resides in the Virgin Islands or another person believed by such person to be a minor residing in the Virgin Islands.

**Unsupported Testimony of a Minor.** Note that § 490(a) expressly states that no conviction may be had for a violation of this subsection on the unsupported testimony of a minor.

**Law Enforcement Officers Participating.** Subsection 490(c)(3) expressly states that the sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this chapter does not constitute a defense to prosecution under this section.

### **37.29 Service Provider Permitting Violation of 14 V.I.C. § 490**

The defendant is charged as an [owner; operator] of a [computer on-line service; Internet service; local electronic bulletin board] with the crime of permitting a subscriber to use such service to solicit a minor to commit an illegal sexual act. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant was an [owner; operator] of [a computer on-line service; an Internet service; local electronic bulletin board service]; and

(2) Defendant permitted a subscriber to use the service[s] to commit a violation of the law, knowing that the person intended to use the service[s] to *<name the violation of § 490 involved>*; and

(3) Defendant acted intentionally or willfully, and was not acting in good faith in providing the service[s]; and

(4) Defendant's conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 490(c)(1)

#### ***Practice Note***

The text of 14 V.I.C. § 490(c)(1) provides as follows:

It is unlawful any owner or operator of a computer on-line service, Internet service, or local bulletin board service intentionally or willfully to permit a subscriber to use the service to commit a violation of this section, knowing that the person intended to use the service to violate this section. No owner or operator of a public computer on-line service, internet service, or local bulletin board service may be held liable on account of any action taken in good faith in providing the aforementioned services.

## Chapter 38. LARCENY & LOST PROPERTY OFFENSES 14 V.I.C. §§ 1081-94, 2101-03

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### 38.01 Definition

Larceny is the unlawful taking, stealing, carrying, leading, or driving away the personal property of another.

#### Sources & Authority

14 V.I. Code § 1081

#### ***Practice Note***

The text of 14 V.I.C. § 1081 is set forth verbatim in the definitional Instruction above.

### 38.03 Appropriation of Lost Property

The defendant is charged with the crime of appropriating lost property. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant found lost property, and appropriated it to [(his; her) own use; the use of another person not entitled thereto]; and
- (2) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.



## Sources & Authority

### 14 V.I. Code § 1082

#### ***Practice Note***

The text of 14 V.I.C. § 1082 is as follows:

#### **§ 1082. § Appropriating lost property**

Whoever finds lost property, and appropriates such property to his own use, or to the use of another person not entitled thereto, is guilty of larceny.

### **38.05 Grand Larceny**

The defendant is charged with the crime of grand larceny. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant unlawfully [took; stole; carried, led, or drove away] personal property from the person of another worth \$500 or more; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

### 14 V.I. Code § 1083

*Todmann v. People*, 59 V.I. 926 (V.I. 2013); *Connor v. People*, 59 V.I. 286 (V.I. 2013); *Ibrahim v. Virgin Islands*, 47 V.I. 589 (D.V.I. 2005)

#### ***Practice Note***

The text of 14 V.I.C. § 1083 is as follows:

#### **§ 1083. Grand larceny**

- (a) Whoever takes property—
  - (1) which is of \$500 or more in value; or
  - (2) from the person of another—commits grand larceny and shall be imprisoned for not more than 10 years.

(b) Whoever is convicted of grand larceny shall be required to pay mandatory restitution.

**Restitution.** Under subsection (b) of 14 V.I.C. § 1083 any person convicted of grand larceny must be required to pay mandatory restitution.

**Example.** In a grand larceny prosecution against the acting administrator of the Government Employees' Retirement System, it was inconsequential whether defendant believed that in drawing an extra salary for performing the duties of the chief financial officer, he was taking his rightful compensation. The essence of the crime was that he knowingly, duplicitously, and unlawfully gave himself additional compensation without any lawful authorization to do so. *Todmann v. People*, 59 V.I. 926 (V.I. 2013).

**Laptop Computers.** In several cases grand larceny convictions have been upheld for theft of a laptop computer. See *Connor v. People*, 59 V.I. 286 (V.I. 2013); *People v. Jackson*, 2010 V.I. LEXIS 46 (V.I. Super. Ct. June 4, 2010).

**Intent to Permanently Deprive of Property.** In one well-known case, the evidence was sufficient to uphold a conviction for grand larceny where the defendant failed to either deliver the furniture he purportedly sold, or to return the victim's payment, thus permitting the jury reasonably to infer that the defendant bore the requisite intent to permanently deprive the victim of her money. *Ibrahim v. Virgin Islands*, 47 V.I. 589 (D.V.I. 2005).

**Larceny as Lesser Included Offense.** The Superior Court has found that a defendant charged with third-degree robbery could be convicted of the lesser-included offense of grand larceny under 14 V.I.C. § 1083(2), since grand larceny, which did not contain the element requiring that the value of the property exceed \$100, did not require proof of any element beyond what was required in proving third-degree robbery. *People v. Jackson*, 2010 V.I. LEXIS 46 (V.I. Super. Ct. June 4, 2010).

### **38.07 Petit Larceny**

**The defendant is charged with the crime of petit larceny. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant unlawfully [took; stole; carried, led, or drove away] the personal property of another; and**
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## Sources & Authority

### 14 V.I. Code § 1083

#### ***Practice Note***

The text of 14 V.I.C. § 1083 is as follows:

#### **§ 1084. Petit larceny**

(a) Whoever commits larceny under any other circumstances is guilty of petit larceny and shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

(b) Whoever is convicted of petit larceny shall be required to pay mandatory restitution.

**Restitution.** Under subsection (b) of 14 V.I.C. § 1084 any person convicted of petit larceny must be required to pay mandatory restitution.

**Quaint Example.** Almost 50 years ago the municipal court held that a petit larceny conviction could not be had where government neither produced or offered to produce an allegedly stolen case of whiskey and its contents of twelve bottles of whiskey, nor in any way established a felonious taking by defendant. *Gov't of the V.I. v. Thomas*, 9 V.I. 91, 1972 V.I. LEXIS 4 (V.I. Mun. Ct. 1972).

## **38.09 Value of Evidence of a Debt**

**If the thing stolen consists of any evidence of debt, or other written instrument; the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen.**

## Sources & Authority

### 14 V.I. Code § 1086

#### ***Practice Note***

The text of 14 V.I.C. § 1086 is set forth verbatim in this explanatory Instruction.

## Chapter 39. LOITERING 14 V.I.C. 1191

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### 39.01 Loitering

The defendant is charged with the crime of loitering. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant

*\* Select element(s) charged in this case \**

- ... [lingered; remained; prowled] in a public place for the purpose of [gambling with cards, dice or other gambling paraphernalia; engaging or soliciting another to engage in prostitution pursuant to 14 V.I.C. § 1622; unlawfully using or possessing a controlled substance; unlawfully buying, distributing or consuming an alcoholic beverage; committing a crime];
- ... lingered in or about [school grounds; college or university buildings or grounds];
- ... entered or remained in a school bus, not having any reason or relationship involving custody or responsibility for a student or any other legitimate reason for being there and not having written permission to do so from anyone authorized to grant such permission;
- ... lingered or remained in or about any public building or facility [including but not limited to a local or federal government building, place of business or worship, transportation facility, hotel or guest house] without apparent, legitimate purpose or business therein and in so doing [obstructed or interfered with the legitimate business of another person] {intentionally annoyed or harassed another person;

and

(2) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

### 14 V.I. Code § 1191

#### ***Practice Note***

The text of § 1191 provides as follows:

#### **§ 1191. Loitering defined; punishment**

(a) To loiter means to be dilatory, to stand idly around, to linger, delay or wander about, or to remain, abide, or tarry in a public place and, in doing so, engage in any one of the activities set forth in subsections (b) and (c).

(b) A person commits the crime of loitering when the person:

(1) lingers, remains or prowls in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia pursuant to 14 V.I.C. § 1224;

(2) lingers, remains or prowls in or about school grounds or college or university buildings or grounds, remains in or enters a school bus as defined in 20 V.I.C. § 377(a), not having any reason or relationship involving custody or responsibility for a student or any other legitimate reason for being there and not having written permission from anyone authorized to grant permission pursuant to 14 V.I.C. § 1749;

(3) lingers or remains in a public place for engaging or soliciting another to engage in prostitution pursuant to 14 V.I.C. § 1622;

(4) lingers or remains in a public place for the purpose of unlawfully using or possessing a controlled substance pursuant to 19 V.I.C. § 604, et seq.;

(5) lingers or remains in a public place for the purpose of unlawfully buying, distributing or consuming an alcoholic beverage pursuant to 14 V.I.C. § 485;

(6) lingers or remains in or about any public building or facility, including a local or federal government building, place of business or worship, transport facility, hotel or guest house without apparent, legitimate purpose or business therein and in so doing obstructs or interferes with the legitimate business of another person or intentionally annoys or harasses such other person; or

(7) lingers or remains in a public place for the purpose of committing a crime.

(c) Among the factors to be considered in determining if a person is loitering are if that person:

(1) takes flight upon the appearance of a law enforcement officer;

(2) loiters or prowls in a manner not usual for a law-abiding citizen; or

(3) manifestly endeavors to disguise or conceal himself or any object.

**Statutes.** The statutory text of the loitering provision cross-references the statutes that define gambling paraphernalia, statutes concerning school busses and permission to enter a bus, alcohol control statutes, controlled drug statutes, and prostitution statutes. It is not anticipated that the specific citations in the loitering statute would be provided to the jury. If the substance of any of those offenses is to be explained, the Model Jury Instructions for each such offense should be consulted for recommended text.

**Opportunity.** It may be noted that § 1191(d) provides that – unless a suspect has fled or another circumstance makes it impracticable – prior to an arrest for loitering, a law enforcement officer shall give the suspect the opportunity to identify himself and explain his presence and conduct.

**Defense.** Under 14 V.I.C. § 1191(e), it is a statutory defense to prosecution for loitering if the law enforcement officer fails to give the defendant an opportunity to identify himself and explain his presence and conduct, or if it appears at trial that the explanation offered to the law enforcement officer by the defendant is true and if believed at the time would have dispelled any concern or alarm.

**Carrying Signs.** An opinion of the Attorney General concluded that statutes prohibiting loitering, public nuisances, and the carrying on public sidewalks, of any objects which might expose pedestrians to injury or which might obstruct their passage, are not applicable to the carrying of hand-held advertising signs on public streets and sidewalks. 8 V.I. Op. Att'y Gen. 146.

### **39.03 Factors in Considering a Loitering Charge**

Among the factors to be considered in determining if a person was loitering are whether that person:

- (1) took flight upon the appearance of a law enforcement officer;
- (2) loitered or prowled in a manner not usual for a law-abiding citizen; or
- (3) manifestly endeavored to disguise or conceal himself or any object.

#### **Sources & Authority**

14 V.I. Code § 1191(c)

## Chapter 40. MALICIOUS MISCHIEF 14 V.I.C. § 1261 – 1267

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### 40.01 Destroying Written Instrument

The defendant is charged with the crime of destroying a written instrument. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant [mutilated; tore; defaced; obliterated; destroyed] a written instrument that [is; was] the property of another, the false making of which would be forgery; and

(2) Defendant acted maliciously, meaning intentionally and without just cause or excuse, consciously violating the law; and

(3) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

### 14 V.I. Code § 1261

#### ***Practice Note***

The text of 14 V.I.C. § 1261 provides:

#### **§ 1261. Destroying written instruments**

Whoever maliciously mutilates, tears, defaces, obliterates or destroys any written instrument, the property of another, the false making of which would be forgery, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

**Malicious Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “malice” or “maliciously” mean “the doing of a wrongful act, intentionally, without just cause or excuse; a conscious violation of the law to the prejudice of another.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

### **40.03 Destruction of Bridge, Road or Way**

The defendant is charged with the crime of destroying a bridge, road or way. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant [dug up; removed; displaced; broke; injured; obstructed; destroyed] a [public highway; public bridge; private way laid out by authority of law; bridge upon such highway or private way]; and

(2) Defendant acted maliciously, meaning intentionally and without just cause or excuse, consciously violating the law; and

(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.



**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## **Sources & Authority**

**14 V.I. Code § 1262**

### ***Practice Note***

The text of 14 V.I.C. § 1262 provides:

**§ 1262. Destruction of bridges, roads, highways, etc.**

Whoever maliciously digs up, removes, displaces, breaks or otherwise injures, obstructs or destroys—

- (1) any public highway or bridge;
- (2) any private way laid out by authority of law; or
- (3) any bridge upon such highway or private way—

shall be fined not more than \$500 or imprisoned not more than 1 year, or both.

**Malicious Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “malice” or “maliciously” mean “the doing of a wrongful act, intentionally, without just cause or excuse; a conscious violation of the law to the prejudice of another.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

## **40.05 Tampering With or Illegal Use of Utility or Cable Service**

**The defendant is charged with the crime of [tampering with; illegal use of] a [utility; cable service]. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [willfully altered; willfully tampered with; willfully injured; knowingly allowed to be injured] any [meter; meter seal; pipe; conduit; wire; line; cable; transformer; amplifier; apparatus; device] belonging to a [utility; cable television company; community antenna line company] in such a

- manner as to [cause loss or damage thereto; alter the index or break the seal of any such meter; in any way hinder or interfere with the proper action or just registration of any such meter or device];
- ... knowingly [used; wasted; allowed the waste of] [utility; cable television company; community antenna line company] service by any means;
  - ... knowingly [used; wasted; allowed the waste of] [electricity; gas; water] passing through any such [meter; wire; pipe; fitting; appliance; appurtenance] [connected with; belonging to] any such [utility; cable television company; community antenna line company] after such [meter; wire; pipe; fitting; appliance; appurtenance] was [tampered with; injured; altered];
  - ... [made; caused to be made] any connection with any [wire; cable; main; service pipe or other pipes; appliance; appurtenance] in such manner as to use without the consent of the [utility; cable television company; community antenna line company], any [service; electricity; gas; water];
  - ... caused to be supplied any [service; electricity; gas; water] from a [utility; cable television company; community antenna line company] service to any [person; firm; corporation;] without such service being reported for payment of such [electricity; gas; water] passing through a [meter; other device] provided by the [utility; cable television company; community antenna line company] and used for measuring and registering the quantity of [electricity; gas; water; service] passing through the same
  - ... caused to be supplied any [service; electricity; gas; water] from a [utility; cable television company; community antenna line company] service to any [lamp; burner; orifice; faucet; outlet] whatsoever, without such service being reported for payment of such [electricity; gas; water] passing through a [meter; device] provided by the [utility; cable television company; community antenna line company] and used for measuring and registering the quantity of [electricity; gas; water; service] passing through the same;
  - ... [used; received the direct benefit from the use of] a [utility; cable television company; community antenna line company] service [knowing; under such circumstances as would induce a reasonable person to believe] that such direct benefits have resulted from any [tampering with; altering of; injury to] any [connection; wire; conductor; meter; pipe; conduit; line; cable; transformer; amplifier; apparatus; device] owned, operated, or controlled by such [utility; cable television company; community antenna line company] for the purpose of avoiding payment;

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1263**

### ***Practice Note***

The text of 14 V.I.C. § 1263 provides:

#### **§ 1263. Tampering and illegal use of utility or cable television equipment**

(b) It is unlawful to:

(1) Willfully alter, tamper with, injure, knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility or a cable television company or community antenna line service in such a manner as to cause loss or damage; or to alter the index or break the seal of any such meter; or in any way to hinder or interfere with the proper action or just registration of any such meter or device; or knowingly to use, waste, or suffer the waste of cable television service or communication antenna line service, by any means, or electricity, gas or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility or cable television company or community antenna line service, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.

(2) Make or cause to be made any connection with any wire, cable, main, service pipe or other pipes, appliance, or appurtenance in such manner as to use without the consent of the utility or cable television company or community antenna line service, any service or any electricity, gas, or water, or to cause to be supplied any service or electricity, gas, or water from a utility or a cable television company or community antenna line service to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without such service being reported for payment of such electricity, gas, or water passing through a meter or other device provided by the utility or cable television company

and used for measuring and registering the quantity of electricity, gas, water, or service passing through the same.

(3) Use or receive the direct benefit from the use of a utility, cable television company, or community antenna line service knowing, or under such circumstances, as would induce a reasonable person to believe that such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility or cable television company or community antenna line company, for the purpose of avoiding payment.

\* \* \* \*

**Licensed Electrical Contractors.** A safe-harbor provision included in subsection (d) of § 1261 provides that its prohibitions should not be construed to apply to licensed electrical contractors while performing usual and ordinary service in accordance with recognized standards or the installation and operation of cogeneration facilities or utility interface renewable energy systems.

**Punishment.** Subsection (e) of § 1261 prescribes that a person who willfully violates the statute is guilty of a misdemeanor and will be punished by a fine of not less than \$500 nor more than \$3000 or by imprisonment. However, if the person has been previously convicted under this section, he or she will be fined not less than \$1000 but not more than \$10,000 and must be imprisoned for not less than three months but not more than one year.

**Civil Action Results.** Subsection (f) of § 1261 provides that any person found in a civil action to have violated the provisions the statute will be liable to the utility or cable television company or community antenna line service involved in an amount equal to three times the amount of services unlawfully obtained.

#### **40.07 Tampering or Illegal Use of Utility -- Definition**

For the crime of tampering with or illegal use of a utility, the following definition applies:

A "utility" includes any person, firm, corporation, or association, whether private, public, quasi-public, or cooperative which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or communication service, but does not include a cable television company or any person owning, controlling, operating, managing, or leasing a cable television system in the territory.

#### **Sources & Authority**

14 V.I. Code § 1263(a)

## ***Practice Note***

The text of 14 V.I.C. § 1263(a) provides:

### **§ 1263. Tampering and illegal use of utility or cable television equipment**

(a) As used in this section, “utility” includes any person, firm, corporation, or association, whether private, public, quasi-public, or cooperative which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or communication service, but does not include a cable television company or any person owning, controlling, operating, managing, or leasing a cable television system in the territory.

## **40.09 Presumption from Diversion Device or Alteration**

For the crime of tampering with or illegal use of a utility or cable service, the presence on property in the actual possession of the defendant of any device or alteration which effects the diversion or use of the service of a utility, cable television company, or community antenna line service so as to avoid the registration of such use by or on a meter installed by the utility or so as to otherwise avoid the reporting of use of such service for payment shall be prima facie evidence of the violation of this section by such defendant; however, this presumption shall not apply unless each of the following conditions exist:

- (1) The presence of such a device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility or cable television services; and
- (2) The defendant has received the direct benefit of the reduction of the cost of such utility or cable television services; and
- (3) Defendant has received the direct benefit of such utility or cable television services for at least one full billing cycle.

### **Sources & Authority**

14 V.I. Code § 1263(c)

## ***Practice Note***

The text of 14 V.I.C. § 1263(c) provides:

### **§ 1263. Tampering and illegal use of utility or cable television equipment**

\* \* \* \*

(c) The presence on property in the actual possession of a person of any device or alteration which effects the diversion or use of the service of a utility, cable television company, or community antenna line service so as to avoid the registration of such use by or on a meter installed by the utility or so as to otherwise avoid the reporting of use of such service for payment shall be prima facie evidence of the violation of this section by such person; however, this presumption shall not apply unless each of the following conditions exist:

(1) The presence of such a device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility or cable television services.

(2) The person charged has received the direct benefit of the reduction of the cost of such utility or cable television services.

(3) The customer or recipient of the utility or cable television services has received the direct benefit of such utility or cable television services for at least one full billing cycle.

#### **40.11 Taking Water Without Authority**

The defendant is charged with the crime of taking water without authority. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant took water from any** [canal; well; cistern; ditch; flume; reservoir] **used for the purpose of** [holding; conveying] **water for** [manufacturing; agriculture; irrigation; generation of power; domestic uses]; **and**

**(2) Defendant did not have authority from the** [owner; agent] **managing the water supply; and**

**(3) Defendant acted with intent to defraud; and**

**(4) This conduct took place on or about** <date> **in** [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1264(1)

## ***Practice Note***

The text of 14 V.I.C. § 1264(1) provides:

**§ 1264. Taking water without authority; injury to canal, etc.**

Whoever—

(1) without authority of the owner or managing agent and with intent to defraud, takes water from any canal, well, cistern, ditch, flume or reservoir used for the purpose of holding or conveying water for manufacturing, agriculture, irrigation, generation of power or domestic uses;

\* \* \* \*

shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

### **40.13 Interference or Damaging Water System**

The defendant is charged with the crime of [interfering with; damaging] a water system. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant

*\* Select element(s) charged in this case \**

... [raised; lowered; disturbed] any [gate; apparatus] used for the [control; measurement] of water;

... [emptied; placed] into any [canal; well; cistern; ditch; flume; reservoir] any [rubbish; filth; obstruction to the free flow of water];

and

(2) Defendant had no authority to do so; and

(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1264(2)-(3)

## ***Practice Note***

The text of 14 V.I.C. § 1264(2)-(3) provides:

**§ 1264. Taking water without authority; injury to canal, etc.**

Whoever—

(2) without like authority, raises, lowers or otherwise disturbs any gate or other apparatus used for the control or measurement of water; or

(3) empties or places into any such canal, well, cistern, ditch, flume or reservoir, any rubbish, filth or obstruction to the free flow of the water—

shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

### **40.15 Destroying or Defacing Monuments, Tombstones or Cemetery Grounds**

The defendant is charged with the crime of [destroying; defacing] a [tombstone; cemetery grounds]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [defaced; broke; destroyed; removed] a [tomb, monument or gravestone erected to any deceased person; memento or memorial; ornamental plant, tree or shrub appertaining to the place of burial of a human being];

... [marked; defaced; injured; destroyed; removed] any [fence; post; rail; wall] of any [cemetery; graveyard];

**and**

**(2) Defendant acted willfully, meaning on purpose or willingly, and maliciously, meaning intentionally and without just cause or excuse, consciously violating the law;**  
**and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**



**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1265**

### ***Practice Note***

The text of 14 V.I.C. § 1265 provides:

**§ 1265. Destroying or defacing tombstones or cemetery grounds**

Whoever—

(1) willfully and maliciously defaces, breaks, destroys or removes any—

(A) tomb, monument or gravestone erected to any deceased person;

(B) memento or memorial; or

(C) ornamental plant, tree or shrub appertaining to the place of burial of a human being; or

(2) marks, defaces, injures, destroys or removes any fence, post, rail or wall of any cemetery or graveyard—

shall be fined not more than \$1000 or imprisoned not more than 5 years, or both.

**Willful and Malicious Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. The terms “malice” or “maliciously” are defined in § 41 to mean “the doing of a wrongful act, intentionally, without just cause or excuse; a conscious violation of the law to the prejudice of another.” Since there are no specialized definitions of these terms in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definitions adopted by the Legislature in § 41 are the source of the language in Element (2) of the above Instruction.

## **40.17 Destruction of Public School Property**

The defendant is charged with the crime of destruction of public school property. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant [defaced; damaged; destroyed; injured], in any way, any property, real or personal, of the Government of the Virgin Islands on the [premises; grounds] of a public school; and

(2) Defendant acted willfully, meaning on purpose or willingly;

(3) Defendant acted without lawful authority; and

(4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1265a(a)

### ***Practice Note***

The text of 14 V.I.C. § 1265a(a) provides:

#### **§ 1265a. Destruction of public school property**

(a) Whoever willfully and without lawful authority defaces, damages, destroys or otherwise injures, in any way, any property, real or personal, of the Government of the Virgin Islands on the premises or grounds of a public school shall be fined not less than \$5,000 nor more than \$10,000, plus the actual costs of repairing the damages; and be imprisoned for a mandatory minimum term of five years. Notwithstanding any other provision of law with respect to any person sixteen years of age or over who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. The court may provide at the time of sentencing of any person convicted under this subsection that such person shall, if granted a work release assignment during his confinement, perform manual labor on the premises vandalized.

**Willful Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

**Penalties.** Subsection (b) of § 1265(a) provides that where a person under 16 years of age is found to have violated this section, the sentencing court may, in addition to such other disposition as it may order, require the violator to perform manual labor on the premises vandalized, which labor may include grasscutting, painting, litter gathering, janitorial and other duties, for such period of time as the court deems appropriate.

**Payment of Fines and Costs.** As provided in subsection (c) of the statute, the fines and costs charged and collected in accordance with § 1265a must be deposited into an imprest account of the school vandalized and must be used to defray the costs associated with the damages that occurred and for any other school-related damage. Subsection (d) of the statute goes on to provide that the parents, guardians, or other persons having legal custody of a person younger than 18 years of age who is found to have violated this section shall be responsible for the fine imposed. Further, 14 V.I.C. §1265b provides that the parents, guardians or other person having legal custody of a minor less than 18 years of age who shall injure any public or private school property shall be liable to (i) in the case of public school property, the Government of the Virgin Islands, or (ii) in the case of private school property, the person or entity legally responsible for the control or operation of such property, for damages for the amount of the injury in any court of competent jurisdiction, together with costs of suit.

#### **40.19 Negligent Destruction or Damaging of Hydrant**

**The defendant is charged with the crime of negligent [destruction; damaging] of a public fire hydrant. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant [destroyed; damaged in any manner] a public fire hydrant; and**
- (2) Defendant’s conduct was negligent, meaning (he; she) did give as much attention to the nature and probable consequences of (his; her) acts or omissions as a prudent person ordinarily would in the circumstances; and**
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1265c**

### ***Practice Note***

The text of 14 V.I.C. § 1265c provides:

**§ 1265c. Willful or negligent destruction or damage of public fire hydrants**

(a) Whoever willfully destroys or damages in any manner a public fire hydrant shall be guilty of a misdemeanor, shall be fined not less than \$100 and not more than \$500, or imprisoned not less than one month and not more than nine months or both, and shall pay to the Government of the Virgin Islands a sum equal to the total cost of repairing or replacing the destroyed or damaged public fire hydrants, such total cost to include a reasonable allowance for labor costs.

(b) Whoever negligently destroys or damages in any manner a public fire hydrant shall pay to the Government of the Virgin Islands a sum equal to the total cost of repairing or replacing the destroyed or damaged public fire hydrants, such total cost to include a reasonable allowance for labor costs.

Note that under subsection (b) of this statute a person who negligently destroys or damages in any manner a public fire hydrant shall pay to the Government of the Virgin Islands a sum equal to the total cost of repairing or replacing the destroyed or damaged public fire hydrants, such total cost to include a reasonable allowance for labor costs

**Negligence.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “neglect”, “negligence”, “negligent” or “negligently” mean a want of such attention to the nature of probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

## **40.19 Willful Destruction or Damaging Hydrant**

The defendant is charged with the crime of willful [destruction; damaging] of a public fire hydrant. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [destroyed; damaged in any manner] a public fire hydrant; and
- (2) Defendant's conduct was willful, meaning on purpose or willingly; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1265c

### ***Practice Note***

The text of 14 V.I.C. § 1265c provides:

#### **§ 1265c. Willful or negligent destruction or damage of public fire hydrants**

(a) Whoever willfully destroys or damages in any manner a public fire hydrant shall be guilty of a misdemeanor, shall be fined not less than \$100 and not more than \$500, or imprisoned not less than one month and not more than nine months or both, and shall pay to the Government of the Virgin Islands a sum equal to the total cost of repairing or replacing the destroyed or damaged public fire hydrants, such total cost to include a reasonable allowance for labor costs.

(b) Whoever negligently destroys or damages in any manner a public fire hydrant shall pay to the Government of the Virgin Islands a sum equal to the total cost of repairing or replacing the destroyed or damaged public fire hydrants, such total cost to include a reasonable allowance for labor costs.

**Willful Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it

means to act on purpose or willingly. Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

#### **40.19 Destruction of Property**

The defendant is charged with the crime of destruction of property. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant [injured; destroyed] any real or personal property not his own; and

(2) Defendant acted maliciously, meaning intentionally and without just cause or excuse, consciously violating the law; and

(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1266

#### ***Practice Note***

The text of 14 V.I.C. § 1266 provides:

##### **§ 1266. Destruction of other property**

Whoever maliciously injures or destroys any real or personal property not his own, in cases not otherwise specified in this Code, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

**Malicious Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “malice” or “maliciously” mean “the doing of a wrongful act, intentionally, without just cause or excuse; a conscious violation of the law to the prejudice of another.” Since there is no specialized definition of this term in the

Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

#### **40.21 Institutional Vandalism (Damage Not Exceeding \$ 500)**

The defendant is charged with the crime of institutional vandalism. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant** [defaced; broke; destroyed; removed; damaged]

*\* Select element(s) charged in this case \**

... a [church; synagogue; building, structure or place used primarily for religious worship or for other religious purposes];

... the [personal property; adjacent grounds] of a [church; synagogue; building, structure or place used primarily for religious worship or for other religious purposes];

... a [cemetery; mortuary; other facility used for the purpose of burial or memorializing the dead];

... the [personal property; adjacent grounds] of a [cemetery; mortuary; other facility used for the purpose of burial or memorializing the dead];

... [a private school; an educational facility; a community center];

... the [personal property; adjacent grounds] of [a private school; an educational facility; a community center];

and

**(2) The amount of damage or loss, including the cost of repair or replacement of property damaged or lost, did not exceed \$500, and**

**(3) Defendant acted willfully, meaning on purpose or willingly; and**

**(4) This conduct took place on or about <date> in** [this judicial division; <name of judicial division>.

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

14 V.I. Code § 1267

## ***Practice Note***

The text of 14 V.I.C. § 1267 provides:

### **§ 1267. Institutional vandalism**

(a) Whoever willfully defaces, breaks, destroys, removes or otherwise damages:

(1) any church, synagogue or other building, structure or place used primarily for religious worship or for other religious purposes;

(2) any cemetery, mortuary or other facility used for the purpose of burial or memorializing the dead not otherwise provided for under section 1265 of this chapter;

(3) any private school, educational facility or community center;

(4) the grounds adjacent to, and owned or rented by, any institution, facility, building, structure or place described in paragraphs (1), (2), or (3) of this subsection and sections 1265 and 1265a of this chapter; or

(5) any personal property contained in any institution, facility, building structure or place described in paragraphs (1), (2), or (3) of this subsection and sections 1265 and 1265a of this chapter;

shall be fined \$1,000 and imprisoned one (1) year if the amount of damage does not exceed \$500 and fined \$5,000 and imprisoned for five (5) years if the amount of damage exceeds \$500.

(b) In determining the amount of damage to or loss of property under subsection (a) of this section, damage includes the cost of repair or replacement of the property that was damaged or lost.

**Willful Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (3) of the above Instruction.

**Parent or Guardian Liability. Subsection** (c) of § 1267 provides that – notwithstanding any other provision of law – the parent(s) or legal guardian(s) of any unemancipated minor shall be liable for any judgment rendered against such minor in any civil action irrespective of any criminal prosecution or the result thereof under this section.



Note that under § 1267(a)(2) the crime must relate to a cemetery, mortuary or other facility used for the purpose of burial or memorializing the dead not otherwise provided for under § 1265.

#### **40.21 Institutional Vandalism (Damage Exceeding \$ 500)**

The defendant is charged with the crime of institutional vandalism. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant [defaced; broke; destroyed; removed; damaged]**

*\* Select element(s) charged in this case \**

- ... a [church; synagogue; building, structure or place used primarily for religious worship or for other religious purposes];
- ... the [personal property; adjacent grounds] of a [church; synagogue; building, structure or place used primarily for religious worship or for other religious purposes];
- ... a [cemetery; mortuary; facility used for the purpose of burial or memorializing the dead];
- ... the [personal property; adjacent grounds] of a [cemetery; mortuary; facility used for the purpose of burial or memorializing the dead];
- ... [a private school; an educational facility; a community center];
- ... the [personal property; adjacent grounds] of [a private school; an educational facility; a community center];

and

**(2) The amount of damage or loss, including the cost of repair or replacement of property damaged or lost, exceeded \$500, and**

**(3) Defendant acted willfully, meaning on purpose or willingly; and**

**(4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>.**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

14 V.I. Code § 1267

## ***Practice Note***

The text of 14 V.I.C. § 1267 provides:

### **§ 1267. Institutional vandalism**

(a) Whoever willfully defaces, breaks, destroys, removes or otherwise damages:

(1) any church, synagogue or other building, structure or place used primarily for religious worship or for other religious purposes;

(2) any cemetery, mortuary or other facility used for the purpose of burial or memorializing the dead not otherwise provided for under section 1265 of this chapter;

(3) any private school, educational facility or community center;

(4) the grounds adjacent to, and owned or rented by, any institution, facility, building, structure or place described in paragraphs (1), (2), or (3) of this subsection and sections 1265 and 1265a of this chapter; or

(5) any personal property contained in any institution, facility, building structure or place described in paragraphs (1), (2), or (3) of this subsection and sections 1265 and 1265a of this chapter;

shall be fined \$1,000 and imprisoned one (1) year if the amount of damage does not exceed \$500 and fined \$5,000 and imprisoned for five (5) years if the amount of damage exceeds \$500.

(b) In determining the amount of damage to or loss of property under subsection (a) of this section, damage includes the cost of repair or replacement of the property that was damaged or lost.

**Willful Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (3) of the above Instruction.

**Parent or Guardian Liability. Subsection (c)** of § 1267 provides that – notwithstanding any other provision of law – the parent(s) or legal guardian(s) of any unemancipated minor shall be liable for any judgment rendered against such minor in any civil action irrespective of any criminal prosecution or the result thereof under this section.

## Chapter 41. MAYHEM 14 V.I.C. § 1341 - 1344

### 41.01 Mayhem ..... 467

#### 41.01 Mayhem

The defendant is charged with the crime of mayhem. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant inflicted upon the person of *<name of victim>* any injury which [seriously disfigured (him; her) by any mutilation thereof; destroyed or disabled any member or organ of his body; seriously diminished (his; her) physical vigor by the injury of any member or organ]; and

(2) Defendant acted willfully, meaning on purpose or willingly;

(3) Defendant intended [to commit the felony of *<name of felony>*; to injure, disfigure or disable *<name of victim>*]; and

(4) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### Sources & Authority

14 V.I. Code § 1341

#### ***Practice Note***

The text of § 1341 of Title 14 provides:

##### § 1341. Mayhem defined

(a) Whoever willfully and with intent to commit a felony or to injure, disfigure or disable, inflicts upon the person of another any injury which—

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ—

shall be imprisoned not more than 15 years.

**Mayhem by Any Means Whatsoever.** Note that 14 V.I.C. § 1342 expressly states that for the crime of mayhem, it is immaterial by what means or instrument, or in what manner, the injury was inflicted.

**Willful Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

**Complete Recovery of the Victim.** In addition, § 1344 of Title 14 provides that if – by the time of trial – the person injured has so far recovered from the injury that he is no longer disfigured by it in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for mayhem can be had. The same section notes that, in such a case of essentially complete recovery, the defendant may, however, be convicted of assault in any degree.

## Chapter 42. NUISANCES 14 V.I.C. § 1461 - 1462

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### 42.01 Public Nuisance -- Definition

A public nuisance is defined as anything which is injurious to health, indecent, offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by a considerable number of persons; or which unlawfully obstructs the customary free passage or use of any navigable lake, river, bay, stream, canal or basin, or any public park, square, street or highway.

#### Sources & Authority

14 V.I. Code § 1461

#### ***Practice Note***

The text of the definitional provision, 14 V.I.C. § 1461, is as follows:

#### **1461. Public nuisance defined**

Anything which—

(1) is injurious to health, indecent, offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by a considerable number of persons; or

(2) unlawfully obstructs the customary free passage or use of any navigable lake, river, bay, stream, canal or basin, or any public park, square, street or highway—

is a public nuisance.

**Scope.** A nuisance is not public unless it affects the entire neighborhood or community, or a considerable number of persons. A public nuisance differs from a private nuisance in that the former affects the public at large while the latter only affects an individual or a limited number of individuals. *Gov't of the V.I. v. Latalladi*, 8 V.I. 137 (V.I. Mun. Ct. 1970).

**Example.** An abandoned dump truck on the main travelled part of a public highway, with no flares, lights or reflectors warning of its presence, constituted a public nuisance and an absolute nuisance. *Collins v. Gov't of Virgin Islands*, 236 F. Supp. 441 (D.V.I. 1964), rev'd on other grounds, 366 F.2d 279 (3d Cir. 1966).

**Carrying signs.** The Attorney General has opined that statutes prohibiting loitering, public nuisances, and the carrying on public sidewalks of any objects which might expose pedestrians

to injury or which might obstruct their passage, are not applicable to the carrying of hand-held advertising signs on public streets and sidewalks. 8 V.I. Op. Att'y Gen. 146.

### **42.03 Public Nuisance**

**The defendant is charged with the crime of causing a public nuisance. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant** [maintained; committed; willfully omitted to perform any legal duty to remove] **a public nuisance; and**

**(2) This conduct took place on or about** <date> **in** [this judicial division; <name of judicial division>].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

14 V.I. Code § 1461, § 1462

### ***Practice Note***

The provisions of § 1461 are set forth above. Title 14 § 1462 of the V.I. Code provides:

Whoever—

(1) maintains or commits any public nuisance for which no punishment is prescribed elsewhere in this title or other law; or

(2) willfully omits to perform any legal duty relating to the removal of a public nuisance—

shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

**Public officials.** Decades ago the federal court held that officials of the Government of the Virgin Islands violate the law and are negligent when they willfully omit to perform their legal duty to remove a public nuisance or to abate or offset it. *Collins v. Gov't of Virgin Islands*, 236 F. Supp. 441 (D.V.I. 1964), rev'd on other grounds, 366 F.2d 279 (3d Cir. 1966).

**Private Right of Action.** Private parties aggrieved by a nuisance as defined in what is now 14 V.I.C. § 1461 may file a complaint against the person maintaining it. 2 V.I. Op. Att'y Gen. 180.

## Chapter 43. OBSTRUCTION OF JUSTICE 14 V.I.C. § 1501 - 1510

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### **43.01 Corruptly Influencing a Juror, Arbitrator or Referee**

The defendant is charged with the crime of corruptly influencing a [juror; arbitrator; referee]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant corruptly attempted to influence [a juror; a person summoned or drawn as a juror; a person chosen as an arbitrator; a person appointed as a commissioner or referee], in respect to (his; her) **verdict or decision in any cause or proceeding, pending or about to be brought before** (him; her), by means of any—

*\* Select element(s) charged in this case \**

... [oral; written] communication with (him; her), except in the regular course of proceedings;

... exhibiting to (him; her) any book, paper or instrument, except in the regular course of proceedings;

... [threat; intimidation; persuasion; entreaty]; or

... [promise; assurance] of any pecuniary or other advantage;

**and**

- (2) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

14 V.I. Code § 1501

### ***Practice Note***

The text of 14 V.I.C. § 1501 is as follows:

#### **§ 1501. Corruptly influencing jurors, arbitrators and referees**

Whoever corruptly attempts to influence a juror, or any person summoned or drawn as a juror, chosen as an arbitrator or appointed as a commissioner or referee, in respect to his verdict in, or decision of, any cause or proceeding, pending or about to be brought before him, by means of any—

(1) oral or written communication with him, except in the regular course of proceedings;

(2) book, paper or instrument exhibited, except in the regular course of proceedings;

(3) threat, intimidation, persuasion or entreaty; or

(4) promise or assurance of any pecuniary or other advantage—

shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

### **43.03 Corrupt Act by Juror, Arbitrator or Referee**

The defendant is charged with the crime of a corrupt act as [a juror; an arbitrator; a referee]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant was [a juror; a person summoned as a juror; chosen as an arbitrator or appointed as a commissioner or referee]; and

(2) Defendant

*\* Select element(s) charged in this case \**

... made any [promise; agreement] to give a [verdict; decision for or against] any party;



... willfully and corruptly permitted any communication to be made to (him; her);

... willfully and corruptly received any [book; paper; instrument; information] relating to any [cause; matter] pending before (him; her), except in the regular course of proceedings;

**and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1502**

### ***Practice Note***

The text of 14 V.I.C. § 1502 is as follows:

#### **§ 1502. Corrupt acts by jurors, arbitrators and referees**

Whoever, being a juror, or a person summoned as a juror, chosen as an arbitrator or appointed as a commissioner or referee—

(1) makes any promise or agreement to give a verdict or decision for or against any party; or

(2) willfully and corruptly permits any communication to be made to him or receives any book, paper, instrument or information relating to any cause or matter pending before him, except in the regular course of proceedings—

shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

### **43.05 Preparing False Evidence**

The defendant is charged with the crime of preparing false evidence. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant prepared any [false; antedated] [book; paper; record; instrument; other matter or thing], **with intent to** [produce it; allow it to be produced as genuine or true], **in any** [trial; legally authorized proceeding or inquiry]; **and**
- (2) **This conduct took place on or about** <date> **in** [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1503

#### ***Practice Note***

The text of 14 V.I.C. § 1503 is as follows:

##### **§ 1503. Preparing false evidence**

Whoever prepares any false or antedated book, paper, record, instrument or other matter or thing, with intent to produce it or to allow it to be produced as genuine or true, upon any trial, proceeding or inquiry whatever, authorized by law, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

### **43.07 Offering False Documents**

The defendant is charged with the crime of offering false documents. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) **That in any** [trial; proceeding; inquiry; investigation] **authorized or permitted by law, the defendant offered in evidence as genuine or true, any** [book; paper; document; record; instrument; writing], **knowing the same to have been** [forged; fraudulently altered; fraudulently antedated]; **and**
- (2) **This conduct took place on or about** <date> **in** [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 1504

### ***Practice Note***

The text of 14 V.I.C. § 1504 is as follows:

#### **§ 1504. Offering false documents in evidence**

Whoever, upon any trial, proceeding, inquiry or investigation authorized or permitted by law, offers in evidence as genuine or true, any book, paper, document, record or other instrument or writing, knowing the same to have been forged or fraudulently altered or antedated, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

### **43.09 Influencing the Testimony of a Witness**

The defendant is charged with the crime of influencing the testimony of a witness. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... practiced any [fraud; deceit] on;

... knowingly [made; exhibited] any false [statement; representation; token; writing] to

**any** [witness; person about to be called as a witness], **in any** [trial; proceeding; inquiry; investigation] **authorized by law; and**

**(2) This conduct took place on or about** <date> **in** [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 1505

#### ***Practice Note***

The text of 14 V.I.C. § 1505 is as follows:

#### **§ 1505. Influencing the testimony of witnesses**

Whoever—

- (1) practices any fraud or deceit on; or
  - (2) knowingly makes or exhibits any false statement, representation, token or writing to—
- any witness, or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation authorized by law, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

### **43.11 Destruction of Evidence**

The defendant is charged with the crime of destruction of evidence. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant knew that any [book; paper; record; instrument; writing; matter; thing] was about to be produced in evidence in any trial, inquiry or investigation authorized by law; and
- (2) Defendant willfully [destroyed; concealed] such [book; paper; record; instrument; writing; matter; thing]; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 1506

## ***Practice Note***

The text of 14 V.I.C. § 1506 is as follows:

### **§ 1506. Destruction of evidence**

Whoever, knowing that any book, paper, record, instrument, writing or other matter or thing is about to be produced in evidence upon any trial, inquiry or investigation authorized by law, willfully destroys or conceals the same, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

## **43.13 Preventing or Dissuading Witness from Attending Trial**

The defendant is charged with the crime of preventing or dissuading a witness from attending trial. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) **The defendant willfully** [prevented; dissuaded] **any person who** [was; might become] **a witness, from attending any** [trial; proceeding; inquiry] **authorized by law; and**
- (2) **This conduct took place on or about** *<date>* **in** [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

## **Sources & Authority**

14 V.I. Code § 1507

## ***Practice Note***

The text of 14 V.I.C. § 1507 is as follows:

### **§ 1507. Preventing or dissuading witnesses from attending trial**

Whoever willfully prevents or dissuades any person who is or may become a witness, from attending any trial, proceeding or inquiry authorized by law, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

### **43.15 Interfering with an Officer, Firefighter, or First Responder Discharging Lawful Duty**

The defendant is charged with the crime of interfering with [an officer; a firefighter; a first responder] **discharging (his; her) duty. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant did any act that [hampered; impeded] a [peace officer; firefighter; first responder] in the performance of lawful duties; and**
- (2) Defendant acted with a purpose to [prevent; obstruct; delay] the performance by such [peace officer; firefighter; first responder] of any authorized act within the [peace officer's; firefighter's; first responder's] official capacity; and**
- (3) Defendant had no [privilege; authority] to take such action; and**
- (4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1508

#### ***Practice Note***

The text of 14 V.I.C. § 1508 is as follows:

**§ 1508. Interfering with an officer, firefighter, or first responder discharging his duty**

(a) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a peace officer, firefighter, or first responder of any authorized act within the peace officer's, firefighter's, or first responder's official capacity, shall do any act that hampers or impedes a peace officer, firefighter or first responder in the performance of lawful duties.

(b) Whoever violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000, or imprisoned for not more than one (1) year, or both.

### **43.17 Malicious Interference with Emergency Communications**

The defendant is charged with the crime of malicious interference with emergency communications. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant intentionally**

*\* Select element(s) charged in this case \**

... [prevented; hindered] the [initiation; making; completion] of an emergency communication by another person;

... [initiated; made] repeated nonemergency communications to any 911 or other emergency communications center, knowing it was thereby likely that the operations of the emergency communications center would be disrupted];

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

14 V.I. Code § 1508a

### ***Practice Note***

The text of 14 V.I.C. § 1508a is as follows:

**§ 1508a. Malicious interference with emergency communications**

\* \* \* \*

(b) A person is guilty of malicious interference with emergency communications punishable by a fine of not more than \$1,000, or imprisonment for not more than 1 year, or by both such fine and imprisonment when the person:

(1) Intentionally prevents or hinders the initiation, making, or completion of an emergency communication by another person; or

(2) Intentionally initiates or makes repeated nonemergency communications to any 911 or other

emergency communications center, knowing it was thereby likely that the operations of the emergency communications center would be disrupted.

### **43.19 Definitions of Emergency Communications and Emergency Communications Center**

For the crime of malicious interference with emergency communications, the following definitions apply:

- (1) “Emergency communication” means any telephone call or any other form of communication made, transmitted or facilitated by radio, computer, or any other electronic device that is intended by its maker to provide warning or information pertaining to any crime, fire, accident, disaster or risk of injury, or damage to any person or property.
- (2) “Emergency communications center” means any public or private facility or entity that accepts emergency communications for the purpose of notifying, dispatching, directing or coordinating law enforcement, fire, medical, emergency medical services provider, paramedic, ambulance, rescue, utility or other public safety personnel.

#### **Sources & Authority**

14 V.I. Code § 1508a(a)

#### ***Practice Note***

The text of 14 V.I.C. § 1508a(a) is as follows:

#### **§ § 1508a. Malicious interference with emergency communications**

(a) As used in this section

(1) “Emergency communication” means any telephone call or any other form of communication made, transmitted or facilitated by radio, computer, or any other electronic device that is intended by its maker to provide warning or information pertaining to any crime, fire, accident, disaster or risk of injury, or damage to any person or property.

(2) “Emergency communications center” means any public or private facility or entity that accepts emergency communications for the purpose of notifying, dispatching, directing or coordinating law enforcement, fire, medical, emergency medical services provider, paramedic, ambulance, rescue, utility or other public safety personnel.



### **43.21 Interference with Property in an Officer's Custody**

The defendant is charged with the crime of interference with property in the custody of an officer. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant willfully [injured; destroyed; took from the custody of any officer or person], any personal property which such [officer; person] had in (his; her) charge under any process of law; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1509

#### ***Practice Note***

The text of 14 V.I.C. § 1509 is as follows:

#### **§ 1509. Interfering with property in custody of an officer**

Whoever willfully injures, destroys or takes from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

### **43.23 Retaliating Against or Threatening a Witness**

The defendant is charged with the crime of [retaliating against; threatening] a witness. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant used [force a threat; threats; intimidation] against any person [called or to be called as a witness at any trial, proceeding, inquiry or investigation authorized by law; who provides information relating to a crime

to a law enforcement officer or other employee of the local or federal government who is responsible for investigating or prosecuting offenses]; **and**

**(2) Defendant intended to** [influence or prevent the testimony of such person; retaliate for any testimony given, or any record, document or other object produced by such person]; **and**

**(3) This conduct took place on or about** <date> **in** [this judicial division; <name of judicial division>].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1510**

### ***Practice Note***

The text of 14 V.I.C. § 1510 is as follows:

**§ 1510. Retaliating against or threatening a witness**

(a) Whoever—

(1) uses force, threat, or intimidation against any person called or to be called as a witness at any trial, proceeding, inquiry or investigation authorized by law relating to a felony (as defined in section 2 of this title), with intent to influence or prevent the testimony of such person or in retaliation for any testimony given, or any record, document or other object produced by such person; or

(2) uses force, threat, or intimidation against any person who provides information relating to a felony (as defined in section 2 of this title), to a law enforcement officer or other employee of the local or federal government who is responsible for investigating or prosecuting offenses—

shall be fined not more than \$2,000, or imprisoned not more than ten years, or both.

(b) Whoever—

(1) uses force, threat, or intimidation against any person called or to be called as a witness at any trial, proceeding, inquiry or investigation authorized by law

relating to a misdemeanor (as defined in section 2 of this title), with intent to influence or prevent the testimony of such person or in retaliation for any testimony given, or any record, document or other object produced by such person; or

(2) uses force, threat, or intimidation against any person who provides information relating to a misdemeanor (as defined in section 2 of this title), to a law enforcement officer or other employee of the local or federal government who is responsible for investigating or prosecuting offenses—

shall be fined not more than \$500, or imprisoned not more than one year, or both.

**Degree of Offense.** The statute quoted above differentiates between felony and misdemeanor cases; since the operation of both subparts (a) and (b) is the same, however, the jury can be instructed fully and accurately without making that distinction.

**Constitutionality.** The Superior Court held, a decade ago, that the provisions of 14 V.I.C. § 1510(a)(2) outlawing the threatening of a witness, are not unconstitutionally vague under the Fourteenth Amendment, as statutory construction favors validity, and applicable case law permits the required scienter to be smuggled from §1510(a)(1). The court would construe the statute, as applied to defendant, to require that he have knowledge regarding the victim's providing information to law enforcement officers. *People v. Thomas*, 53 V.I. 319 (V.I. Super. Ct. 2010).

## Chapter 44. PERJURY 14 V.I.C. §§ 1541 – 1549

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### 44.01 Perjury

The defendant is charged with the crime of perjury. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That [in an action, proceeding, hearing, inquiry; on an occasion when an oath may be lawfully administered] **the defendant swore or affirmed that**

*\* Select element(s) charged in this case \**

... (he; she) would truly [testify; declare; depose; certify];

... any [testimony; declaration; deposition; certificate; affidavit; other writing] subscribed by (him; her) is true;

and

- (2) **Defendant willfully and knowingly** [testified declared, deposed or certified falsely; stated in his testimony, deposition, affidavit or certificate any matter to be true which he knew to be false]; and

- (3) **This conduct took place on or about <date> in** [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 1541

### ***Practice Note***

The text of 14 V.I.C. § 1541 is as follows:

#### **§ 1541. Perjury defined**

Whoever, in or in connection with, any action, proceeding, hearing or inquiry or on any occasion when an oath may be lawfully administered—

- (1) swears or affirms—
    - (A) that he will truly testify, declare, depose or certify; or
    - (B) that any testimony, declaration, deposition, certificate, affidavit or other writing subscribed by him is true; and
  - (2) willfully and knowingly testifies, declares, deposes or certifies falsely or states in his testimony, deposition, affidavit or certificate any matter to be true which he knows to be false—
- shall be imprisoned not more than 10 years.

**Willful and Knowing Conduct.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. The term “knowingly” is defined in § 41 as meaning “personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there are no specialized definitions of these terms in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definitions adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

**Statutory Immunity.** Title 14 § 1542 addresses immunity of witness from criminal prosecution as bar to prosecution for perjury, providing that any section of the Code which declares that evidence obtained upon the examination of a person as a witness cannot be received against him in any criminal proceeding, shall not be construed as preventing such evidence from being proved against him in any proceeding based on a charge of perjury committed in such examination.

**Lack of Knowledge of Materiality of False Statement.** The Virgin Islands Code provides in 14 V.I.C. § 1544 that “[i]t is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him, or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material and might have been used to affect such proceeding.”

**Unqualified Statements Where Facts are Unknown Equivalent to Falsity.** The Code further provides, in 14 V.I.C. § 1547, that an “unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.”

**Irregular Administration of the Oath.** Section 1543 of Title 14 states that “[i]t is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.”

**Incompetence of the Accused.** In § 1545 the Virgin Islands Code provides that “[i] is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.”

**Depositions.** Section 1546 of Title 14 provides that the making of a deposition or certificate “is deemed to be complete, for purposes of this chapter, from the time it is delivered by the accused to any other person with the intent that it be uttered or published as true.”

**Punishment.** Title 14 § 1549 provides that the punishment for one guilty of willful perjury or subornation of perjury that “procures the conviction and punishment of any innocent person,” is punishable by the same penalty that was inflicted upon such innocent person; but in no case shall the punishment be less than one year imprisonment.

### **43.03 Subornation of Perjury**

The defendant is charged with the crime of subornation of perjury. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant willfully [procured; induced another person to commit] perjury; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1548

#### ***Practice Note***

The text of 14 V.I.C. § 1548 is as follows:

**§ 1548. Subornation of perjury**

Whoever willfully procures or induces another to commit perjury, shall be imprisoned not more than 10 years.

Annotations

**Willful Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (1) of the above Instruction.

## **Chapter 45. PROSTITUTION & RELATED OFFENSES 14 V.I.C. § 1621 – 1626**

<b>45.01</b>	<b>Definitions</b> .....	<b>487</b>
<b>45.05</b>	<b>Solicitation</b> .....	<b>488</b>
<b>45.07</b>	<b>Operating a Place of Prostitution</b> .....	<b>489</b>
<b>45.09</b>	<b>Knowingly Leasing Property for Purposes of Prostitution</b> .....	<b>491</b>
<b>45.11</b>	<b>Keeping a House of Prostitution</b> .....	<b>492</b>
<b>45.13</b>	<b>Pandering</b> .....	<b>493</b>

### **45.01 Definitions**

For prostitution and related offenses, the following statutory definitions are applied:

“assignment” includes the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement;

“lewdness” includes any indecent or obscene act;

“prostitution” includes the offering or receiving of the body for sexual intercourse for hire and the offering or receiving of the body for indiscriminate sexual intercourse without hire.

### **Sources & Authority**

14 V.I. Code § 1621

### ***Practice Note***

The text of 14 V.I.C. § 1621 is as follows:

#### **§ 1621. Definitions**

As used in this chapter—

“assignment” includes the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement;

“lewdness” includes any indecent or obscene act; and

“prostitution” includes the offering or receiving of the body for sexual intercourse for hire and the offering or receiving of the body for indiscriminate sexual intercourse without hire.

### **45.03 Prostitution, Lewdness, or Assignment**

The defendant is charged with the crime of [prostitution; lewdness; assignment]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant engaged in [prostitution; lewdness; assignment]; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1622(1)

#### ***Practice Note***

The text of 14 V.I.C. § 1622(1) is as follows:

#### **§ 1622. Prohibiting prostitution**

Whoever—

- (1) engages in prostitution, lewdness or assignment;

### **45.05 Solicitation**

The defendant is charged with the crime of soliciting for the purpose of [prostitution; lewdness; assignment]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [procured; solicited; offered to procure; offered to solicit], for the purpose of [prostitution; lewdness; assignment]; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].



If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 1622(2)

#### ***Practice Note***

The text of 14 V.I.C. § 1622(2) is as follows:

#### **§ 1622. Prohibiting prostitution**

Whoever— \* \* \* \*

(2) procures or solicits, or offers to procure or solicit,  
for the purpose of prostitution, lewdness or assignation;

### **45.07 Operating a Place of Prostitution**

The defendant is charged with the crime of operating a place of prostitution. The People must prove beyond a reasonable doubt each of the following elements of that crime:

#### **(1) The defendant**

*\* Select element(s) charged in this case \**

... [kept; set up; maintained] any place, structure, building or conveyance for the purpose of [prostitution; lewdness; assignation];

... [permitted; permits] any place, structure, building or conveyance [owned by (him; her); under (his; her) control] to be used for the purpose of [prostitution; lewdness; assignation] with [knowledge; reasonable cause to know] that the same [is; is to be] used for such purpose;

... [received; offered; agreed to receive], any person into any place, structure, building or conveyance for the purpose of [prostitution; lewdness; assignation];

... permits any person to remain in any structure, building or conveyance for the purpose of [prostitution; lewdness; assignation];

... [directed; took; transported; offered or agreed to take or transport] any person to [any place, structure or building; any other person] with [knowledge; reasonable cause to know] that the purpose of such [directing; taking; transporting] is [prostitution; lewdness; assignation]; or

... [resided; entered; remained] in any place, structure or building for the purpose of [prostitution; lewdness; assignation];

... [enters; remains] in any conveyance for the purpose of [prostitution; lewdness; assignation];

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

14 V.I. Code § 1622(3)-(7)

### ***Practice Note***

The text of 14 V.I.C. § 1622(3)-(7) is as follows:

#### **§ 1622. Prohibiting prostitution**

Whoever—\* \* \* \*

(3) keeps, sets up or maintains any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation;

(4) permits any place, structure, building or conveyance owned by him, or under his control, to be used for the purpose of prostitution, lewdness or assignation with knowledge or reasonable cause to know that the same is, or is to be, used for such purpose;

(5) receives, or offers or agrees to receive, any person into any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation, or permits any person to remain there for such purpose;

(6) directs, takes or transports, or offers or agrees to take or transport, any person to any place, structure or building, or to any other person with knowledge or

reasonable cause to know that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation; or

(7) resides in, enters or remains in any place, structure or building, or enters or remains in any conveyance for the purpose of prostitution, lewdness or assignation—

shall be fined not more than \$100 or imprisoned not more than 180 days, or both.

**Selection of Elements.** It is anticipated that only the statutory elements applicable in a given case – from among those charges set forth in elements 1A to 1G of this instruction – will be given.

### **45.09 Knowingly Leasing Property for Purposes of Prostitution**

The defendant is charged with the crime of knowingly leasing property for purposes of prostitution. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [leased; rented; contracted to lease; contracted to rent] any vehicle, conveyance, place, structure, building or any part thereof, [knowing; with good reason to know], that it is to be used for purposes of [prostitution; lewdness; assignation];

... discovered, subsequent to execution of a [lease; contract] that the structure, building, or any part thereof has been converted for the purposes of [prostitution; pandering; lewdness; assignation], and failed to advise the Police Commissioner of the conversion in writing;

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1623**

## ***Practice Note***

The text of 14 V.I.C. § 1623 is as follows:

### **§ 1623. Knowingly leasing property for purposes of prostitution**

(a) Whoever leases, rents or contracts to lease or rent, any vehicle, conveyance, place, structure, building or any part thereof, knowing or with good reason to know, that it is to be used for purposes of prostitution, lewdness or assignation, shall be fined not more than \$100 or imprisoned not more than 180 days, or both.

(b) If, subsequent to execution of a lease, the owner of the leased property discovers that the building has been converted for the purposes of prostitution, pandering, lewdness or assignation, the owner shall advise the Police Commissioner of the conversion in writing. The owner shall have the right and responsibility to seek eviction of the lessee from the property. If the landlord fails to so notify the Police Commissioner, he shall be considered to have knowingly leased the premises as described under subsection (a) of this section and be subject to the penalties of that subsection.

\* \* \* \*

**Knowing Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (1) of the above Instruction.

### **45.11 Keeping a House of Prostitution**

**The defendant is charged with the crime of keeping a house of prostitution. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant [kept; had an interest in keeping] a [house of ill-fame or assignation of any description; house or place for persons to visit for unlawful sexual intercourse or for any sexual, obscene or indecent purpose; disorderly house or any place of public resort by which the peace, comfort or decency of a neighborhood is disturbed]; and**

(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 1624

### ***Practice Note***

The text of 14 V.I.C. § 1624 is as follows:

#### **§ 1624. Keeping house of prostitution**

Whoever keeps or has any interest in keeping—

- (1) a house of ill-fame or assignation of any description;
  - (2) a house or place for persons to visit for unlawful sexual intercourse or for any sexual, obscene or indecent purpose; or
  - (3) a disorderly house or any place of public resort by which the peace, comfort or decency of a neighborhood is disturbed—
- shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

Over four decades ago, the federal district court held that conviction for keeping a house for persons to visit for unlawful sexual intercourse requires proof that the house in fact contained facilities or chambers for sexual intercourse, and any solicitation must contemplate that the proposed activity be intramural and within the walls of the house if it is to be used to show a house is kept for such purposes. *Government of the V.I. v. Amaro*, 1971 U.S. Dist. LEXIS 5086 (D.V.I. 1971).

## **45.13 Pandering**

The defendant is charged with the crime of pandering. The People must prove beyond a reasonable doubt each of the following elements of that crime:

### **(1) The defendant**

*\* Select element(s) charged in this case \**

... by [promises; threats; violence; any device or scheme] [caused; induced; persuaded; encouraged] a person to [become a resident; remain a resident] of [a house of prostitution; any place in which prostitution is encouraged or allowed];

- ... by [fraud; artifice; duress of person or goods; abuse of any position of confidence or authority] procured any person to [become a resident of a house of ill-fame; enter any place in which prostitution is encouraged or allowed; to come into the Virgin Islands or leave the Virgin Islands for the purpose of prostitution]; or
- ... [received; gave; agreed to receive; agreed to give] any [money; thing of value] for [procuring; attempting to procure] any person to [become a resident of a house of ill-fame within the Virgin Islands; come into the Virgin Islands or leave the Virgin Islands for the purpose of prostitution];
- ... knowing a person to be a prostitute. [lived or derived support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from monies loaned or advanced to or charged against such prostitute by any keeper, manager or inmate of a house or other place where prostitution is practiced or allowed; touted or received compensation for touting for such prostitute];

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1625**

### ***Practice Note***

The text of 14 V.I.C. § 1625 is as follows:

#### **§ 1625. Pandering**

Whoever, by promises, threats, violence or by any device or scheme, causes, induces, persuades or encourages—

(1) a person to become an inmate of a house of prostitution, or procures for a person a place as inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed; or

(2) an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as such inmate; or

Whoever, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures any person to become an inmate of a house of ill-fame, or to enter any place in which prostitution is encouraged or allowed, or to come into the Virgin Islands or leave the Virgin Islands for the purpose of prostitution; or

Whoever receives or gives, or agrees to receive or give, any money or thing of value for procuring or attempting to procure, any person to become an inmate of a house of ill-fame within the Virgin Islands, or to come into the Virgin Islands or leave the Virgin Islands for the purpose of prostitution; or

Whoever, knowing a person to be a prostitute—

(1) lives or derives support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from monies loaned or advanced to or charged against such prostitute by any keeper, manager or inmate of a house or other place where prostitution is practiced or allowed; or

(2) touts or receives compensation for touting for such prostitute—

shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both; Provided, That whoever induces a person under the age of 18 into becoming a prostitute, or receives compensation for pandering for such minor, shall be imprisoned not less than 2 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, imposition or execution of this two-year minimum period of incarceration shall not be suspended; neither shall probation, parole or any other form of release be granted for this minimum period of incarceration.

**Corroboration Requirement.** Under 14 V.I.C. § 1626, in a trial for the crime of pandering, “the defendant cannot be convicted upon the testimony of the person injured, unless it is corroborated by some other evidence tending to connect the defendant with the commission of the crime.”

## Chapter 46. PUBLIC OFFICER & EMPLOYEE OFFENSES 14 V.I.C. § 1661-65

46.01	Definition .....	496
46.03	Embezzlement or Falsification of Public Accounts .....	496
46.05	Neglecting to Pay Over Public Monies.....	499
46.07	False Certificate by Public Officer.....	500
46.09	Disclosure of Confidential Trade Secrets .....	501

### 46.01 Definition

For prosecutions under this Chapter of the Virgin Islands Code, “public monies” includes all bonds and evidences of indebtedness and all monies belonging to the Government of the Virgin Islands.

#### Sources & Authority

14 V.I. Code § 1661

### 46.03 Embezzlement or Falsification of Public Accounts

The defendant is charged with the crime of embezzlement or falsification of public accounts. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant was a [public officer; person] **charged with the receipt, safekeeping, transfer or disbursement of public monies; and**
- (2) Defendant

*\* Select element(s) charged in this case \**

- ... appropriated public monies or any portion thereof to [(his; her) own use; the use of another], without authority of law;
- ... failed to keep public monies in (his; her) possession until [disbursed; paid out] by authority of law;
- ... [loaned public monies or any portion thereof; made a profit out of public monies; uses public monies] for any purpose not authorized by law;



- ... unlawfully deposited public monies, or any portion thereof [in any bank; with any banker; with any other person];
- ... [changed; converted] any portion of public monies [from coin into currency; from currency into coin or other currency], without authority of law;
- ... [kept any false account of; made any false entry or erasure in any account of or relating to] public monies, knowingly, meaning (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal;
- ... [fraudulently altered; falsified; concealed; destroyed; obliterated] any [account of; documents relating to an account of] public monies;
- ... willfully (that is, on purpose or willingly) [refused; omitted] to pay over, on demand, any public monies in (his; her) hands, upon the presentation of a [draft; order; warrant] drawn upon such public monies by competent authority;
- ... willfully (that is, on purpose or willingly) omits to transfer public monies, when such transfer is required by law;
- ... willfully (that is, on purpose or willingly) [omitted; refused] to pay over to any [officer; person authorized by law] to receive the same, any money received by (him; her) under any duty imposed by law to pay over the same;

**and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1662**

### ***Practice Note***

The text of 14 V.I.C. § 1662 is as follows:

**§ 1662. Embezzlement or falsification of public accounts**

Whoever, being a public officer or person charged with the receipts, safekeeping, transfer or disbursement of public monies—

(1) appropriates the same, or any portion thereof to his own use or the use of another, without authority of law;

(2) fails to keep the same in his possession until disbursed or paid out by authority of law;

(3) loans the same, or any portion thereof, or makes a profit out of, or uses the same for any purpose not authorized by law;

(4) unlawfully deposits the same, or any portion thereof, in any bank, or with any banker or other person;

(5) changes or converts any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law;

(6) knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same;

(7) fraudulently alters, falsifies, conceals, destroys or obliterates any account, or documents relating thereto;

(8) willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon such moneys by competent authority;

(9) willfully omits to transfer the same, when such transfer is required by law;

(10) willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same—

shall be fined not more than ten thousand (\$10,000) dollars or imprisoned not more than ten (10) years, or both, and shall be disqualified from holding any public office.

**Willful Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in several of the optional portions of Element (2) in the above Instruction.

**Knowing Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in optional Element (1)[F] of the above Instruction.

**Example.** Evidence supported defendant's convictions of aiding and abetting embezzlement or falsification of public accounts in violation of 14 V.I.C. §§ 1662 where defendant provided her sister, who along with an agency employee was submitting fraudulent vouchers in order to receive checks, with the personal information of a longtime acquaintance; when defendant received checks at defendant's post office box made out to the acquaintance, she called the acquaintance and then drove the acquaintance to the bank, where the acquaintance signed and cashed the checks and gave the money to defendant. *Francis v. People*, 57 V.I. 201 (V.I. 2012).

**Fraud or Unauthorized Action.** The Supreme Court held jury instructions on embezzlement under 14 V.I.C. § 1662(3) not plain error, as it benefited defendant by effectively instructing that the People were required to prove the higher standard of “fraud” rather than the lower standard of “not authorized by law,” and the “unauthorized by law” element was uncontested and supported by overwhelming evidence. *Francis v. People*, 57 V.I. 201 (V.I. 2012).

## **46.05 Neglecting to Pay Over Public Monies**

**The defendant is charged with the crime of neglecting to pay over public monies. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant was**

*\* Select element(s) charged in this case \**

... an officer charged with the [receipt; safekeeping; disbursement] of public money, and neglected or failed to keep and pay over such public money in the manner prescribed by law;

... a [clerk; marshal; officer] and received any fine or forfeiture and refused or neglected to pay it over according to law;

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 1663

### ***Practice Note***

The text of 14 V.I.C. § 1663 is as follows:

#### **§ 1663. Neglecting to pay over public monies**

Whoever—

(1) being an officer charged with the receipt, safekeeping, or disbursement of public money, neglects or fails to keep and pay over the same in the manner prescribed by law; or

(2) being a clerk, marshal, or other officer, receives any fine or forfeiture and refuses or neglects to pay over the same according to law—

shall be fined not more than ten thousand (\$10,000) dollars or imprisoned not more than ten (10) years, or both, and shall be disqualified from holding any public office.

### **46.07 False Certificate by Public Officer**

The defendant is charged with the crime of making a false certificate as a public officer. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant was a public officer authorized by law to [make; give] any [certificate; writing]; and
- (2) Defendant [made; delivered] as true any such [certificate; writing] containing statements which (he; she) knew to be false; and
- (3) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 1664

#### ***Practice Note***

The text of 14 V.I.C. § 1664 is as follows:

#### **§ 1664. False certificates by public officers**

Whoever, being a public officer authorized by law to make or give any certificate or writing, makes and delivers as true any such certificate or writing containing statements which he knows to be false, shall be fined not more than \$500 or imprisoned not more than 2 years, or both.

### **46.09 Disclosure of Confidential Trade Secrets**

The defendant is charged with the crime of disclosure of confidential trade secrets. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) **The defendant was an employee of** [the Government of the Virgin Islands; any department, agency or instrumentality of the Government of the Virgin Islands]; **and**
- (2) **Defendant disclosed in any manner not authorized by law any information coming to** (him; her) **in the course of that employment which concerned or related to the trade secrets of any** [person; firm; partnership; corporation; association]; **and**
- (3) **This conduct took place on or about** *<date>* **in** [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 1665

## ***Practice Note***

The text of 14 V.I.C. § 1665 is as follows:

### **§ 16651. Disclosure of confidential trade secrets**

Whoever, being an employee of the Government of the Virgin Islands or any department, agency or instrumentality thereof, discloses in any manner not authorized by law any information coming to him in the course of his employment which concerns or relates to the trade secrets of any person, firm, partnership, corporation, or association, shall be fined not more than \$1,000, or imprisoned not more than one year, or both, and shall be removed from employment.

## Chapter 47. PUBLIC RECORDS DESTRUCTION; FALSIFICATION 14 V.I.C. § 1781

47.01 Defacing or Removing Public Laws .....	503
47.03 Mutilation or Destruction of Records by Public Officer.....	504
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47.07 Falsification of Returns; Failure to Take Oaths or Make Affidavits.....	507

### 47.01 Defacing or Removing Public Laws

The defendant is charged with the crime of [defacing; removing] public laws. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant intentionally [defaced; obliterated; tore down; destroyed] [any copy, transcript or extract from or of any law of the United States or the Virgin Islands; any proclamation, advertisement or notification] **set up at any place in the Virgin Islands by authority of any laws of the United States or the Virgin Islands, or by order of any court, before the expiration of the time for which the same was to remain set up; and**
- (2) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 1781

### ***Practice Note***

The text of 14 V.I.C. § 1781 is as follows:

#### **§ 1781. Defacing or removing posted laws**

Whoever intentionally defaces, obliterates, tears down or destroys—

- (1) any copy, transcript or extract from or of any law of the United States or the Virgin Islands; or

(2) any proclamation, advertisement or notification— set up at any place in the Virgin Islands by authority of any laws of the United States or the Virgin Islands, or by order of any court, before the expiration of the time for which the same was to remain set up, shall be fined not more than \$50 or imprisoned not more than 30 days, or both.

### **47.03 Mutilation or Destruction of Records by Public Officer**

**The defendant is charged with the crime of [mutilation; destruction] of records by a public [officer; employee]. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant was an officer having the custody of any [record; map; book; paper or proceeding of any court], [filed or deposited in any public office; placed in (his; her) hands for any purpose]; and**

**(2) Defendant**

*\* Select element(s) charged in this case \**

... stole [the whole; any part] of a [record; map; book; paper or proceeding of any court], filed or deposited in any public office;

... willfully (meaning on purpose or willingly) [destroyed; mutilated; defaced; altered; falsified; removed; secreted] [the whole; any part] of a [record; map; book; paper or proceeding of any court], filed or deposited in any public office;

... permitted any other person to [destroy; mutilate; deface; alter; falsify; remove; secrete] [the whole; any part] of a [record; map; book; paper or proceeding of any court], filed or deposited in any public office;

**and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1782**



## ***Practice Note***

The text of 14 V.I.C. § 1782 is as follows:

### **§ 1782. Mutilation and destruction of records by public officers**

Whoever, being an officer having the custody of any record, map or book or any paper or proceeding of any court, filed or deposited in any public office or placed in his hands for any purpose—

(1) steals, willfully destroys, mutilates, defaces, alters, falsifies, removes or secretes the whole or any part of such record, map, book, paper or proceeding; or

(2) permits any other person so to do—  
shall be fined not more than \$2,000 or imprisoned not more than 10 years, or both, and shall be disqualified from holding any public office.

**Willful Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2)[B] of the above Instruction.

**Falsification Before Filing; Relation to Other Statutes.** The Supreme Court has noted that falsification of documents *before* they were filed with the Bureau of Motor Vehicles would not constitute falsification of a public record; however, filing documents falsely indicating that a vehicle had been physically inspected and was roadworthy, would constitute making a false representation upon the government under § 843(3) and filing a false instrument under § 795. *Mendoza v. People*, 55 V.I. 660 (V.I. 2011).

## **47.05 Mutilation and Destruction of Records**

The defendant is charged with the crime of [mutilation; destruction] of records. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant

*\* Select element(s) charged in this case \**

- ... stole [the whole; any part] of a [record; map; book; paper or proceeding of any court] filed or deposited in any public office;
- ... willfully (meaning on purpose or willingly) [destroyed; mutilated; defaced; altered; falsified; removed; secreted] [the whole; any part] of a [record; map; book; paper or proceeding of any court], filed or deposited in any public office;
- ... permitted any other person to [destroy; mutilate; deface; alter; falsify; remove; secrete] [the whole; any part] of a [record; map; book; paper or proceeding of any court], filed or deposited in any public office;

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1782, § 1783**

### ***Practice Note***

The text of 14 V.I.C. § 1783 is as follows:

**§ 1783. Mutilation and destruction of records by persons other than public officers**

Whoever, not being such an officer as is referred to in section 1782 of this title, commits any of the acts specified in that section, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.

**Willful Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in optional Element (1)[B] of the above Instruction.

## **47.07 Falsification of Returns; Failure to Take Oaths or Make Affidavits**

The defendant is charged with the crime of [falsification of returns; failure to take oaths; failure to make affidavits]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant was an [agent; officer] of any [institution; corporation; company]; and
- (2) Defendant [gave or returned a false or fraudulent list, schedule or statement required by law; willfully fails or refuses to take and subscribe to any of the oaths, affidavits or affirmations required by law]; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1784

### ***Practice Note***

The text of 14 V.I.C. § 1784 is as follows:

**§ 1784. Falsification of returns required by law; failing to take oaths or make affidavits**

Whoever, being an agent or officer of any institution, corporation or company—

(1) gives or returns a false or fraudulent list, schedule or statement required by law; or

(2) willfully fails or refuses to take and subscribe to any of the oaths, affidavits or affirmations required by law—

shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

## **Chapter 48. RAPE and OTHER SEXUAL OFFENSES 14 V.I.C. §§ 1699 - 1709**

<b>48.01</b>	<b>Definitions.....</b>	<b>508</b>
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### **48.01 Definitions**

For prosecutions charging rape or other related offenses,

(a) “perpetrator” means a person accused of rape or unlawful sexual contact.

(b) “personal injury” means serious bodily injury, disfigurement, chronic pain, disease, or loss or impairment of a sexual or reproductive organ.

(c) “sexual conduct” means actual or simulated:

(1) Sexual intercourse, including genital to genital, oral to genital, anal to genital, or oral-anal, whether between persons of the same or opposite sex.

(2) Penetration of the vagina or rectum however slight by hand, finger or by any object except when done as part of a recognized medical procedure.

(d) “sexual contact” means any touching of another person with the genitals or any touching of the genitals, anus, groin, inner thighs, buttocks, lips or breasts of another person, or such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person.

(e) “sexual intercourse” means vaginal intercourse or any insertion, however slight, of a hand, finger or object into the vagina, vulva, or labia, excluding such insertion for medical treatment or examination.

(f) “sodomy” means carnal knowledge of any person by the mouth, i.e., cunnilingus or fellatio; or by the anus; or by submission to the same; or by any insertion, however slight, of any object into a person's anus, excluding such insertion for medical treatment or examination.

(g) “victim” means the person alleging to have been subjected to rape or unlawful sexual contact.

### Sources & Authority

14 V.I. Code § 1699

### ***Practice Note***

The text of 14 V.I.C. § 1699 is set forth verbatim in the definitional Instruction above. It is recommended that only those terms that will be applicable to the facts and charges in the pending case be used in instructing the jury, to avoid confusing or distracting them with irrelevant concepts.

### **48.03 Position of Authority Defined**

“Position of authority” shall include, but not be exclusive to the following: an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, baby sitter, or substantially similar position, and a police officer or probation officer other than when the officer is exercising custodial control over a minor.

### **48.05 Rape in the First Degree**

The defendant is charged with the crime of rape in the first degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant committed an act of [sexual intercourse; sodomy] with <name of victim> when

*\* Select element(s) charged in this case \**

- ... through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, (he; she) was incapable of giving consent;
- ... by reason of mental or physical weakness or immaturity or any bodily ailment, (he; she) did not offer resistance;
- ... (his; her) resistance was forcibly overcome;

- ... (his; her) resistance was prevented by fear of immediate and great bodily harm which (he; she) had reasonable cause to believe would be inflicted upon (him; her);
- ... (his; her) resistance was prevented by stupor or weakness of mind produced by an intoxicating, narcotic or anesthetic agent, or when the (he; she) was known by the defendant to be in such state of stupor or weakness of mind from any cause;
- ... the sexual penetration is accomplished by fraud;
- ... (he; she) was, at the time, unconscious of the nature of the act and this was known to the defendant;

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

#### **14 V.I. Code § 1701**

*Flores v. People*, 70 V.I. 958 (V.I. 2019); *Francis v. People*, 57 V.I. 201 (V.I. 2012); *Williams v. People*, 55 V.I. 721 (V.I. 2011)

### ***Practice Note***

The text of 14 V.I.C. § 1701 is as follows:

#### **§ 1701. Rape in the first degree**

(a) Whoever perpetrates an act of sexual intercourse or sodomy with a person—

(1) when through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, the person is incapable of giving consent, or, by reason of mental or physical weakness or immaturity or any bodily ailment, the person does not offer resistance;

(2) when the person's resistance is forcibly overcome;

(3) when the person's resistance is prevented by fear of immediate and great bodily harm which the person has reasonable cause to believe will be inflicted upon the person;

(4) when the person's resistance is prevented by stupor or weakness of mind produced by an intoxicating, narcotic or anesthetic agent, or when the person is known by the defendant to be in such state of stupor or weakness of mind from any cause;

(5) when the sexual penetration is accomplished by fraud; or

(6) when the person is, at the time, unconscious of the nature of the act and this is known to the defendant—  
is guilty of rape in the first degree and shall be imprisoned not less than 10 years nor more than 30 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, imposition or execution of this ten-year minimum period of incarceration shall not be suspended; neither shall probation, parole, or any other form of release be granted for this minimum period of incarceration.

(b) Whoever is convicted of a second or subsequent offense of rape in the first degree shall be punished by imprisonment for life or for any term of years, but not less than 10 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, imposition or execution of the ten-year minimum period of incarceration shall not be suspended; neither shall probation, parole, or any other form of release be granted for this minimum period of incarceration.

(c) Spousal consent shall be an affirmative defense in the event the persons are legally married pursuant to the provisions of title 16, chapter 1 of the Virgin Islands Code.

**Lesser Included Offenses.** Some 35 years ago the Third Circuit held that third degree rape was not an offense included in first degree rape because it requires proof of an element not required to prove first degree rape — that the victim was over fourteen but under sixteen years of age. *Gov't of Virgin Islands v. Joseph*, 765 F.2d 394 (3d Cir. 1985).

**Consent. The Supreme Court concluded that it was not error to refuse** to include an instruction on consent in a first-degree rape case under 14 V.I.C. §1701(3); the words in the instructions given, “when his resistance was prevented by fear of immediate and great bodily harm,” were synonymous with and functionally equivalent to a lack of consent. *Williams v. People*, 55 V.I. 721 (V.I. 2011).

**Unusual Modern Example: No “Stupor.”** In a case where the victim awoke to find defendant touching her back and thought he was her husband, there was insufficient evidence to support a conviction of first-degree rape under § 1701(a)(4), as the evidence that she was sleep-deprived did not show that her sensibility was so greatly dulled as to prevent her from being able to resist sexual intercourse, and nothing supported the further inference that defendant knew that

the victim was so tired so as to be prevented from resisting his sexual advances. *Flores v. People*, 70 V.I. 958 (V.I. 2019).

**Other Examples.** There was sufficient evidence to support defendant's conviction of aggravated rape in the first degree, in connection with domestic violence, when the victim testified that defendant choked her, slapped her, forced her to drink cleaning agents, and put a knife to her chest and neck all before inserting a broomstick into her vagina. *Francis v. People*, 57 V.I. 201 (V.I. 2012).

**Spousal Consent.** Note that spousal consent is declared in subpart (c) of the statute to be an affirmative defense in the event the persons are legally married pursuant to the provisions of Title 16, Chapter 1 of the Virgin Islands Code.

### **48.07 Aggravated Rape in the First Degree**

**The defendant is charged with the crime of aggravated rape in the first degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

**(1) The defendant committed an act of [sexual intercourse; sodomy] with <name of victim> when**

*\* Select element(s) charged in this case \**

- ... through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, (he; she) was incapable of giving consent;
- ... by reason of mental or physical weakness or immaturity or any bodily ailment, (he; she) did not offer resistance;
- ... (his; her) resistance was forcibly overcome;
- ... (his; her) resistance was prevented by fear of immediate and great bodily harm which (he; she) had reasonable cause to believe would be inflicted upon (him; her);
- ... (his; her) resistance was prevented by stupor or weakness of mind produced by an intoxicating, narcotic or anesthetic agent, or when the (he; she) was known by the defendant to be in such state of stupor or weakness of mind from any cause;
- ... the sexual penetration is accomplished by fraud;
- ... (he; she) was, at the time, unconscious of the nature of the act and this was known to the defendant;

**and**



**(2) In committing this offense the defendant** [caused personal injury to <name of victim>; used a deadly weapon]; and

**(3) This conduct took place on or about <date> in** [this judicial division; <name of judicial division>].

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

#### **14 V.I. Code § 1700**

*Francis v. People*, 63 V.I. 724 (V.I. 2015); *John v. People*, 63 V.I. 629 (V.I. 2015); *Rawlins v. People*, 61 V.I. 593 (V.I. 2014); *Brathwaite v. People*, 60 V.I. 419 (V.I. 2014).

### ***Practice Note***

The text of 14 V.I.C. § 1700 is as follows:

#### **§ 1700. Aggravated rape in the first degree**

(a) Whoever perpetrates an act of sexual intercourse or sodomy with a person:

(1) Who is under the age of thirteen, or

(2) who is under sixteen years of age residing in the same household as the perpetrator, and force, intimidation, or the perpetrator's position of authority over the victim is used to accomplish the sexual act; or

(b) Whoever causes personal injury to a victim as the result of an act of rape as set forth in section 1701 of this title; or

(c) Whoever uses a deadly weapon during the commission of an act of rape as set forth in section 1701—

is guilty of aggravated rape in the first degree and shall be imprisoned for life or for any term of years, but not less than 15 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provisions of law, imposition or execution of the fifteen-year minimum period of incarceration shall not be suspended; neither shall probation, parole, or any other form of release be granted for this minimum period of incarceration.

Whoever is convicted of a second or subsequent offense of aggravated rape in the first degree shall be punished by imprisonment for life or for any term of years, but not less than 25

years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, imposition or execution of the twenty-five year minimum period of incarceration shall not be suspended; neither shall probation, parole, or any other form of release be granted for this minimum period of incarceration.

(d) Whoever is convicted of attempted aggravated rape in the first degree shall be punished by imprisonment for not more than 25 years, but not less than 7 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, or any other provision of law, imposition or execution of the seven-year period of incarceration shall not be suspended, nor shall probation, parole or another form of release be granted for this minimum period of incarceration.

(e) Whoever is found guilty of an offense in this section shall receive a psychiatric evaluation and participate in psychosocial counseling.

(f) Spousal consent shall be an affirmative defense in the event the persons are legally married pursuant to the provisions of title 16, chapter 1 of the Virgin Islands Code.

**Spousal Consent.** Note that spousal consent is declared in subpart (f) of the statute to be an affirmative defense in the event the persons are legally married pursuant to the provisions of Title 16, Chapter 1 of the Virgin Islands Code.

**Constitutionality.** Under a rational basis level of scrutiny, the aggravated rape statute, which does not target males to the exclusion of females, bears a rational relationship to prevent individuals from engaging in sexual intercourse with persons under the age of 13 as well as preventing individuals from engaging in sexual intercourse with persons under the age of 16 residing in the same household as the perpetrator, and therefore does not violate constitutional equal protection principles. *People v. Stevens*, 63 V.I. 71 (V.I. 2015).

**Statutory Rape.** At the turn of the Century, the federal district court found that a trial court did not err in interpreting 14 V.I.C. § 1700(a) as a statutory rape statute, and not a specific intent statute requiring proof of knowledge by the defendant of the victim's age, and the statute did not allow for a mistake of fact defense. *Francis v. Gov't of the V.I.*, 236 F.Supp.2d 498 (D.V.I. 2002). Ten years earlier, the Third Circuit had opined that – on a charge of aggravated rape – the People had the burden of proving beyond a reasonable doubt that: (1) defendant intentionally had sexual intercourse with the alleged victim, (2) the victim was not his spouse, and (3) the victim was under the age of thirteen. *Government of Virgin Islands v. Pinney*, 967 F.2d 912 (3d Cir. 1992).

**Examples.** A victim's testimony as to her age and her testimony that defendant put his hand down her dress, touched her vagina, and inserted his finger into her vagina when she was a fourth-grade student of his was sufficient to establish the elements of aggravated rape in the first

degree as well as unlawful sexual contact. It was not necessary to prove that the victim's hymen was ruptured. *John v. People*, 63 V.I. 629 (V.I. 2015). Similarly, in another case there was held to be sufficient evidence to support defendant's conviction for first-degree aggravated rape, as witnesses testified to the victim's age, a reasonable jury could find that the eight-year-old victim was unmarried, and the victim testified that defendant ordered her to lick his penis, which she did. *Rawlins v. People*, 61 V.I. 593 (V.I. 2014). And in one aggravated rape case, testimony by the victim and her mother was sufficient to prove that the victim was under 13 at the time of the acts; it was not necessary to admit a birth certificate, passport, or baptismal certificate. *Brathwaite v. People*, 60 V.I. 419 (V.I. 2014). See also *Charles v. People*, 60 V.I. 823 (V.I. 2014)(rapes committee over a period of years; the victim's testimony alone was sufficient to prove required elements of the offense).

### **48.09 Rape in the Second Degree**

**The defendant is charged with the crime of rape in the second degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant was committed an act of [sexual intercourse; sodomy] with <name of victim>, who was at least 16 years of age but less than 18 years of age at the time; and**
- (2) Defendant was 5 years or more older than <name of victim>; and**
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

#### **Sources & Authority**

##### **14 V.I. Code § 1702**

*Archibald v. People*, 70 V.I. 975 (V.I. 2019); *Gilbert v. People*, 52 V.I. 350 (V.I. 2009)

#### ***Practice Note***

The text of 14 V.I.C. § 1702 is as follows:

##### **§ 1702. Rape in the second degree**

(a) Any person over 18 years of age who perpetrates under circumstances not amounting to rape in the first degree, an act of sexual intercourse or sodomy with a person who is at least 16 years but less than 18 years of age, and the perpetrator is 5 years or older

than the victim, is guilty of rape in the second degree and shall be imprisoned not more than 10 years.

(b) Whoever is convicted of any offense under this section shall receive a psychiatric evaluation and participate in psychosocial counseling.

(c) Spousal consent shall be an affirmative defense in the event the persons are legally married pursuant to the provisions of title 16, chapter 1 of the Virgin Islands Code.

**Intent?** The Territorial Court held two decades ago that omission of any intent requirement from this section and 14 V.I.C. § 1709 was not merely an oversight by the Legislature; it appears that the Legislature was fully aware of the significance of the defendant's knowledge, yet, chose not to include intent in those sections, therefore, it would be inappropriate for the court to engraft such a requirement. *Virgin Islands v. Richards*, 44 V.I. 47 (V.I. Terr. Ct. 2001).

**Relation to Aggravated Rape Charges.** The Supreme Court has indicated that use of the phrase “aggravated rape in the second degree” in 14 V.I.C. § 1700a(a) indicates the Legislature's intent to impose a harsher penalty for a “rape in the second degree” that is somehow “made worse or more serious” due to the presence of an additional element not required to prove rape in the second degree pursuant to 14 V.I.C. § 1702(a); the Legislature did not intend for every crime chargeable under § 1702(a) to also be chargeable under § 1700a(a). *Gilbert v. People*, 52 V.I. 350 (V.I. 2009).

**Ignorance Defense.** The Territorial Court held at the beginning of this Century that the defenses of “ignorance or mistake of fact” provided by 14 V.I.C. § 14 are only relevant insofar as they “disprove any criminal intent”; because it has been determined that this section and 14 V.I.C. §1709 do not require mens rea, a mistake of fact is no defense to those crimes. *Virgin Islands v. Richards*, 44 V.I. 47 (V.I. Terr. Ct. 2001).

**Prosecutorial Discretion.** The fact that the Legislature expressly modeled 14 V.I.C. §§ 1700a and 1702 after child rape statutes enacted by the states of Maryland and Washington—which largely eliminate prosecutorial discretion—indicates that it did not intend to grant prosecutors the choice of prosecuting individuals under either § 1700a or § 1702 when the age of the victim is 17 and no aggravating factors are alleged. *Gilbert v. People*, 52 V.I. 350 (V.I. 2009).

**Lesser Included Offenses.** Because second-degree aggravated rape under former Code § 1700a was a lesser included offense of first-degree aggravated rape under former Code § 1700, and defendant had notice from the charge of first-degree rape that the victim's age was an element of the charge, he was not prejudiced under the Sixth Amendment by the amendment of the information to include second-degree aggravated rape. *Archibald v. People*, 70 V.I. 975 (V.I. 2019).

**Spousal Consent.** Note that spousal consent is declared in subpart (c) of the statute to be an affirmative defense in the event the persons are legally married pursuant to the provisions of Title 16, Chapter 1 of the Virgin Islands Code.

## **48.11 Aggravated Rape in the Second Degree**

The defendant is charged with the crime of aggravated rape in the second degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant committed an act of sexual intercourse or sodomy with  
<name of victim>

*\* Select element(s) charged in this case \**

... who was under 18 years of age but at least 13 years of age or older at the time;

... using [force; intimidation; the defendant’s position of authority over  
<name of victim> to accomplish the sexual act];

and

(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

**14 V.I. Code § 1700a**

*Francis v. People*, 63 V.I. 724 (V.I. 2015); *Charles v. People*, 60 V.I. 823 (V.I. 2014); *Gilbert v. People*, 52 V.I. 350 (V.I. 2009)

### ***Practice Note***

The text of 14 V.I.C. § 1700a is as follows:

#### **§ 1700a. Aggravated rape in the second degree**

(a) Whoever perpetrates an act of sexual intercourse or sodomy with a person who is under eighteen years but thirteen years or older, or by force, intimidation, or the perpetrator's position of authority over the victim is used to accomplish the sexual act, is guilty of aggravated rape in the second degree and shall be imprisoned for life or for any term in years, but not less than 10 years. “Position of authority” shall include, but not be exclusive to the following: an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, baby sitter, or

substantially similar position, and a police officer or probation officer other than when the officer is exercising custodial control over a minor.

(b) Whoever is convicted of a second or subsequent offense of aggravated rape in the second degree shall be punished by imprisonment for life or for any term of years, but not less than 20 years. Notwithstanding the provisions of title 5, chapters 313, 405 and 407 of this Code, or of any other law, imposition or execution of the twenty-year minimum period of incarceration shall not be suspended; nor shall probation, parole, or any other form of release be granted for the minimum period of incarceration prescribed in this section.

(c) Whoever is convicted of attempted aggravated rape in the second degree shall be punished by imprisonment for not more than 25 years, but not less than 5 years. Notwithstanding the provisions of title 5, chapters 313, 405 and 407, or any other provision of law, imposition or execution of the five-year minimum period of incarceration shall not be suspended, nor shall probation, parole or any other form of release be granted for this minimum period of incarceration.

(d) Whoever is convicted of an offense under this section shall receive a psychiatric evaluation and participate in psychosocial counseling.

(e) Spousal consent shall be an affirmative defense in the event the persons are legally married pursuant to the provisions of title 16, chapter 1 of the Virgin Islands Code.

**Spousal Consent.** Note that spousal consent is declared in subpart (e) of the statute to be an affirmative defense in the event the persons are legally married pursuant to the provisions of Title 16, Chapter 1 of the Virgin Islands Code.

**Constitutionality.** In 2014 the Third Circuit held that the aggravated-second-degree-rape statute is neither unconstitutionally vague nor overbroad, since it does not affect constitutionally protected rights and provides clear and unambiguous notice of the conduct it prohibits. Gov't of the V.I. v. Clarke, 572 Fed. Appx. 138 (3d Cir. 2014).

**Purpose.** Use of the category “aggravated rape in the second degree” in 14 V.I.C. § 1700a(a) indicates the Legislature's intent to impose a harsher penalty for a rape that is somehow “made worse or more serious” due to the presence of an additional element not required to prove rape in the second degree pursuant to 14 V.I.C. § 1702(a); the Legislature did not intend for every crime chargeable under § 1702(a) to also be chargeable under § 1700a(a). *Gilbert v. People*, 52 V.I. 350 (V.I. 2009).

**17-Year Old Victims.** With respect to a 17-year-old victim, the Legislature intended to require the People to prove use of force, intimidation, or abuse of a position of authority to sustain a conviction pursuant to 14 V.I.C. § 1700a. *Gilbert v. People*, 52 V.I. 350 (V.I. 2009).

**Rape and Domestic Violence.** A defendant's conviction for aggravated rape as an act of domestic violence under § 1700a(a) and 16 V.I.C. § 91(b)(6) was supported by sufficient evidence, as there was testimony that defendant was the victim's father and as to the victim's age, defendant as the victim's father was in a position of authority over the victim and used his authority to perpetrate the sexual act, and the victim testified that defendant performed cunnilingus on her and inserted his finger into her vagina. *Gonsalves v. People*, 70 V.I. 812 (2019).

**Spousal Status.** Defendant was not entitled to acquittal of second-degree aggravated rape, as testimony that the victim was his daughter was sufficient for the jury to find that she was not his spouse, and because the victim was 14 at the time of the incident, the prosecution was not required to prove that defendant used force, intimidation, or his position of authority to accomplish the sexual act in order to establish guilt. *Archibald v. People*, 70 V.I. 975 (V.I. 2019).

**Lesser Included Offenses.** Because second-degree aggravated rape under former Code § 1700a was a lesser included offense of first-degree aggravated rape under former Code § 1700, and defendant had notice from the charge of first-degree rape that the victim's age was an element of the charge, he was not prejudiced under the Sixth Amendment by amendment of the information to include second-degree aggravated rape. *Archibald v. People*, 70 V.I. 975 (V.I. 2019).

## **48.11 Rape in the Third Degree**

The defendant is charged with the crime of rape in the third degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant was over 16 years of age but under 18 years of age when (he; she) committed an act of sexual intercourse or sodomy with <name of victim>, who was under 16 years of age but over 13 years of age at the time; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

14 V.I. Code § 1703

### ***Practice Note***

The text of 14 V.I.C. § 1703 is as follows:

#### **§ 1703. Rape in the third degree**

(a) Any person under 18 years of age but over 16 years of age who perpetrates an act of sexual intercourse or sodomy with a person who is under 16 years of age but over 13 years of age, under circumstances not amounting to rape in the first degree, is guilty of rape in the third degree and shall be subject to the jurisdiction of the Family Division of the Superior Court pursuant to Title 4, Chapter 11, Virgin Islands Code. In lieu of a term of detention, the court, in its discretion, may recommend appropriate treatment, counseling or family planning.

(b) Spousal consent shall be an affirmative defense in the event the persons are legally married pursuant to the provisions of title 16, chapter 1 of the Virgin Islands Code.

**Spousal Consent.** As in the other rape statutes, spousal consent is declared in subpart (b) of the statute to be an affirmative defense in the event the persons are legally married pursuant to the provisions of Title 16, Chapter 1 of the Virgin Islands Code.

## **57.13 Penetration Necessary to Constitute Rape**

**Any sexual penetration, however slight, is sufficient to complete the crime [of rape in any degree].**

## Sources & Authority

14 V.I. Code § 1704

### ***Practice Note***

The text of 14 V.I.C. § 1704 is set forth verbatim in the Instruction above.



## **48.15 Unlawful Sexual Contact in the Third Degree**

The defendant is charged with the crime of unlawful sexual contact in the third degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant engaged in sexual contact with *<name of victim>*,

*\* Select element(s) charged in this case \**

... using [force; coercion] to accomplish the sexual contact;

... who [was; is] under 13 years of age at the time;

... who [was; is] under 16 years of age residing in the same household as the defendant, and [force; intimidation; the defendant's position of authority over (him; her)] was used to accomplish the sexual contact;

... by [threatening; placing] (him; her) in fear of imminent and serious bodily injury;

... whose ability to [consent to; resist] the contact was substantially impaired by an [intoxicating; narcotic; anesthetic] agent;

... using fraud to accomplish the sexual contact;

... who was [unconscious; physically helpless];

... whose [mental defect; incapacity] was known to the defendant;

**and**

(2) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

#### **14 V.I. Code § 1708**

*Flores v. People*, 70 V.I. 958 (V.I. 2019); *Rodriguez v. People*, 2019 V.I. 19 (V.I. 2019); *John v. People*, 63 V.I. 629 (V.I. 2015); *Francis v. People*, 63 V.I. 724 (V.I. 2015); *Charles v. People*, 60 V.I. 823 (V.I. 2014); *Ramirez v. People*, 56 V.I. 409 (V.I. 2012); *Williams v. People*, 55 V.I. 721 (V.I. 2011)

## ***Practice Note***

The text of 14 V.I.C. § 1708 is as follows:

### **§ 1708. Unlawful sexual contact in the first degree**

- (a) A person who engages in sexual contact with a person—
- (1) when force or coercion is used to accomplish the sexual contact;
  - (2) when the other person is under thirteen years of age;
  - (3) when the other person is under sixteen years of age residing in the same household as the perpetrator, and force, intimidation or the perpetrator's position of authority over the victim is used to accomplish the sexual contact;
  - (4) when the other person is threatened or placed in fear of imminent and serious bodily injury;
  - (5) when the other person's ability to consent to or resist the contact has been substantially impaired by an intoxicating, narcotic or anesthetic agent;
  - (6) when the sexual contact is accomplished by fraud; or
  - (7) when the other person is unconscious or physically helpless, or that person's mental defect or incapacity is known to the perpetrator—is guilty of unlawful sexual contact and shall be imprisoned not more than 15 years.
- (b) Spousal consent shall be an affirmative defense in the event the persons are legally married pursuant to the provisions of title 16, chapter 1 of the Virgin Islands Code.

**Fraud.** In a case where the victim awoke to find defendant touching her back and thought he was her husband, there was insufficient evidence to support defendant's conviction for first-degree unlawful sexual contact under § 1708(a)(6) because – while defendant touched the victim's back while she was asleep, the back was not an intimate or inherently sexual area, and the jury could not reasonably infer that she was unconscious or that her mental capacity was compromised during the sexual intercourse that followed, as her testimony showed that she was sufficiently alert and aware such that she understood the nature and intent of defendant's repeated touches, and was able to verbally acquiesce to his persistent advances in the belief that he was her husband. *Flores v. People*, 70 V.I. 958 (V.I. 2019).

**Coercion.** The Supreme Court found sufficient evidence to support a conviction for first-degree unlawful sexual contact under a coercion theory where the victim had known defendant in his capacity as a police officer for a number of years and he had disciplined her at her grandmother's request many times; defendant, while acting in his capacity as an officer, located the victim hiding in a bedroom and threatened to return her to a youth rehabilitation center if she did not comply with his sexual demands, after which he grabbed and licked her breast before

leaving the bedroom; and a witness stated that the victim appeared “frightened,” “scared,” and “in shock” when she left the bedroom. *Rodriguez v. People*, 2019 V.I. 19 (V.I. 2019).

**Under Age 13.** There was sufficient evidence to support a conviction for unlawful sexual contact when the victim testified that defendant touched her vagina when she was in the fourth grade and established through her testimony as to her date of birth that she was under 13 at the time. *John v. People*, 63 V.I. 629 (V.I. 2015).

**“Sexual” Contact.** There was sufficient evidence that defendant's contact with the victim was “sexual contact” when a witness testified that she saw defendant with his pants zipper down and with an erection after he took the victim off his lap and there was testimony that defendant touched the victim on the breasts and buttocks. *Charles v. People*. 60 V.I. 823 (V.I. 2014).

**Age.** Whether the victim was 12 years of age, as listed on the Information, or 11, as confirmed by her birth certificate, there was adequate evidence under § 1708(2), which required that she be under 13. *Ramirez v. People*, 56 V.I. 409 (V.I. 2012).

**Spousal Consent.** As in the other sexual offense statutes, spousal consent is declared in subpart (b) of the statute to be an affirmative defense in the event the persons are legally married pursuant to the provisions of Title 16, Chapter 1 of the Virgin Islands Code.

## **48.17 Unlawful Sexual Contact in the Second Degree**

The defendant is charged with the crime of unlawful sexual contact in the second degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant was over 18 years of age when he engaged in sexual contact with *<name of victim>*, who was over 13 years of age but under 16 years of age at the time; and
- (2) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

**14 V.I. Code § 1709**

*Francis v. People*, 59 V.I. 1075 (V.I. 2013)

## ***Practice Note***

The text of 14 V.I.C. § 1709 is as follows:

### **§ 1709. Unlawful sexual contact in the second degree**

(a) A person over eighteen years of age who engages in sexual contact with a person who is over thirteen but under sixteen years of age is guilty of unlawful sexual contact in the second degree and shall be imprisoned not more than 1 year.

(b) Spousal consent shall be an affirmative defense in the event the persons are legally married pursuant to the provisions of title 16, chapter 1 of the Virgin Islands Code.

**Intent.** As noted above, the Territorial Court opined in 2001 that omission of any intent requirement from 14 V.I.C. § 1702 and this section was not merely an oversight by the Legislature; it appears that the Legislature was fully aware of the significance of the defendant's knowledge, yet, chose not to include intent in those sections, therefore, it would be inappropriate for the court to engraft such a requirement. Thus a mistake of fact is no defense. *Virgin Islands v. Richards*, 44 V.I. 47 (V.I. Terr. Ct. 2001).

**Proof of Age.** In a case where the People offered no direct evidence of the defendant's age, the Supreme Court has held that there was sufficient evidence that defendant was over 18 where one defense witness testified that he had known defendant for "20 something" years and another stated that he had known him professionally for 15 to 20 years; moreover, the jury could assess the defendant's age simply by looking at him. *Francis v. People*, 59 V.I. 1075 (V.I. 2013).

**Spousal Consent.** As in the other sexual offense statutes, spousal consent is declared in subpart (b) of the statute to be an affirmative defense in the event the persons are legally married pursuant to the provisions of Title 16, Chapter 1 of the Virgin Islands Code.

## Chapter 49. RECKLESS DRIVING 20 V.I.C. § 492

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### 49.01 Reckless Driving

The defendant is charged with the crime of reckless driving. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant operated a motor vehicle on a public road of the Territory;
- (2) He did so recklessly, which means in a manner indicating either a willful or wanton disregard for the safety of persons or property; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### Sources & Authority

##### 20 V.I. Code § 492

*Milligan v. People*, 69 V.I. 779 (V.I. 2018); *Galloway v. People*, 57 V.I. 693 (V.I. 2012)

#### ***Practice Note***

The relevant portions of the provisions of 20 V.I.C. § 492 are as follows:

##### **§ 492. Operating motor vehicles in reckless manner**

It shall be unlawful for any person to operate a motor vehicle in a reckless manner over and along the public highways of this Territory. For the purpose of this section to “operate in a reckless manner” means the operation of a vehicle upon the public highways of this Territory in such a manner as to indicate either a willful or wanton disregard for the safety of person or property.

**Example Instruction.** In *Galloway*, the Supreme Court quoted the trial court’s jury instruction given on the reckless driving charge:

The defendant, Ira Galloway, is charged in Count II of the Second Amended Complaint with the crime of Operating a Motor Vehicle in a Reckless Manner, in violation of Title 20 of the Virgin Islands Code, Section 492. Under the laws of the Virgin Islands, to “operate a motor vehicle in a reckless manner” means to operate a vehicle upon the public highway of this territory in such a way or manner as to indicate either a willful or wanton disregard for the safety of person or property. “Willful and wanton misconduct” is defined by Black’s Law Dictionary as “conduct committed with an intentional or reckless disregard for the safety of others, as by failing to exercise ordinary care to prevent a known danger or to discover danger.”

Before you may find the defendant guilty of operating a motor vehicle in a reckless manner, you must find that the People have proven each and every one of the following elements beyond a reasonable doubt: One, the defendant, Ira Galloway, did drive or operate or was in physical control of a motor vehicle in a reckless manner. Two, that the defendant did drive or operate a motor vehicle on the public highway and, three, the defendant did drive or operate the vehicle in a manner that indicates a willful and wanton disregard for the safety of person or property and, four, the act occurred on or about July 2, 2010 in the Judicial District of St. Croix, United States Virgin Islands. Public road or highways are defined as all roads, highways and parking areas open for use by the public.

57 V.I. at 708. The Supreme Court found no plain error in that instruction, and stated that it “correctly instructed the jury on the elements of reckless driving.” *Id.* at 711.

**Driving Under the Influence.** In *Galloway*, the Virgin Islands Supreme Court noted that many jurisdictions have interpreted their reckless driving statutes – containing language identical to the Virgin Islands enactment – by holding that a jury can conclude that an individual who chooses to drive a vehicle despite being under the influence of alcohol has engaged in a willful or wanton disregard for the safety of persons or property; likewise, numerous courts have held that running a red light also constitutes a willful or wanton disregard for the safety of persons or property. Therefore, the jury could have concluded that defendant engaged in a “willful or wanton disregard for the safety of person or property” based on either the fact that he drove while intoxicated or the fact that he ran past a red light. *Galloway*, 57 V.I. at 706-07.

**Medical Conditions and Sleep Deprivation.** In its thorough discussion in *Milligan*, the Supreme Court recognized authority from many other jurisdictions holding that criminal recklessness may be found where a defendant chooses to drive an automobile knowing he suffers from a medical condition that could cause him to fall asleep or lose consciousness at the wheel, and it noted that courts have also found evidence of willful, wanton, or reckless conduct when a defendant without a medical condition falls asleep at the wheel — but in such cases, the evidence must demonstrate that the defendant perceived signs of drowsiness and nonetheless continued

driving. 69 V.I. at 787. In *Milligan* itself, the Court noted that – if it were found by the trier of fact that the driver fell asleep at the wheel of his vehicle – that would only be sufficient to convict him of negligence offenses, since “it is well-settled that the mere act of falling asleep while driving does not per se demonstrate a willful or wanton disregard for the safety of others.” *Id.* It quoted authority holding: “[M]erely falling asleep while driving is insufficient evidence of recklessness. Instead, there must be some proof that the driver consciously ignored, for a period of time, substantial warnings that he or she might fall asleep, and continued to drive despite the warnings, before actually falling asleep and causing an accident.” *Id.* The Court concluded that – given that the jury determined that it did not have sufficient evidence to convict Milligan under the negligent homicide standard – there was is “likewise no way the evidence was sufficient to convict him of the same or higher willful and wanton conduct necessary for a finding of reckless driving.” *Id.* at 788. The Court summarized the applicable standard:

*Simply put, to convict Milligan of the essential elements of reckless driving, the jury would also have had to draw from the trial record evidence sufficient to support a finding beyond a reasonable doubt that Milligan felt, but disregarded, signs that he was too tired to drive. Unlike negligence, which only requires a showing of carelessness, reckless driving requires the defendant to have demonstrated a malicious and purposeful indifference, i.e. willful or wanton disregard, for the safety of others. We hold that the People failed to elicit any such evidence.*

*Id.* at 788 (emphasis added).

## Chapter 50. RECKLESS ENDANGERMENT 14 V.I.C. § 625

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### 50.01 Definitions for Reckless Endangerment

For a charge of the crime of reckless endangerment:

- (1) “reckless endangerment” means when a person consciously and knowingly engages in conduct or behavior that may pose intentional harm or physical injuries to another human being or property.
- (2) “public place” means a place to which the general public has a right to resort; but a place which is in point of fact public rather than private, and visited by many persons and usually accessible to the public.

#### Sources & Authority

14 V.I. Code § 625

#### ***Practice Note***

**Public Place Requirement Examples.** Under the reckless endangerment statute, the defendant’s conduct must be in a public place. A “public place” is defined as “a place to which the general public has a right to resort; but a place which is in point of fact public rather than private, and visited by many persons and usually accessible to the public.” 14 V.I.C. § 625(c)(2). See also *Estick*, 62 V.I. at 615; *Augustine*, 55 V.I. at 689. The Supreme Court of the Virgin Islands has observed that the “vast majority” of the cases in its body of precedent on this crime involve conduct occurring on a “public road.” *Davis*, 69 V.I. at 635-36 (citing numerous cases, and applying concepts from Black’s Law Dictionary that spoke of “a place to which the general public has a right to resort; but a place which is in point of fact public rather than private, and visited by many persons and usually accessible to the public.” Definitions in other editions of Black’s Law Dictionary define “public place” as “[a] place to which the general public has a right to resort, not necessarily a place devoted to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public (e.g. a park or public beach). Also, a place in which the public has an interest as affecting the safety, health, morals and welfare of the community. A place exposed to the public, and where the public gathers together or pass to and fro.” *Davis*, 69 V.I. at 636. In *Mulley*, by contrast, firing shots into a school bus satisfied the public place requirement. See also *Woodrup*, 63 V.I. at 711 (“By its plain terms, section 625(a) requires only a showing that the conduct was done in a place that is open to the public or where the public has a right to be, thereby posing a risk of death to members of the public who may be in the area”; *Cascen*, 60 V.I.



at 408 (firing gun into a gathering of people in front of a housing project satisfied the public place requirement).

**Conduct on Private Property.** In the leading *Davis* case, the Supreme Court stated that conduct on private property could – in some circumstances – support conviction under the reckless endangerment statute. It cited caselaw from various states interpreting “public place” language nearly identical to § 625, where it was determined that the parking lot of a tavern, even when closed, was a public place because it was usually accessible to the neighboring public, and holding that a private road was a public place “where a discharged gun could easily result in injury to innocent people who regularly pass close by” and it was located “in an urban area only yards from the road and other houses, and was clearly close to areas where people regularly walk.” However, in *Davis* itself, the Court held that the People had presented insufficient evidence that the defendant’s conduct, which occurred near a tree that appeared to be on privately owned property, took place in a “public place,” since there was no demonstration that the area of the shooting was used by the public in general. The standard recited was: *did the People demonstrate that the area of the shooting “was used by the public in general rather than only the residences next to the area”* ? 69 V.I. at 637.

### **50.03 Reckless Endangerment in the First Degree -- Elements**

The defendant is charged with the crime of reckless endangerment in the first degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant recklessly engaged in conduct in a public place which created a grave risk of death to another person;
- (2) Defendant showed a depraved indifference for human life; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

#### **14 V.I. Code § 625(a)**

*Davis v. People*, 69 V.I. 600 (V.I. 2018); *Mulley v. People*, 51 V.I. 404 (V.I. 2009); *Woodrup v. People*, 63 V.I. 696 (V.I. 2015); *Estick v. People*, 62 V.I. 604 (V.I. 2015); *Freeman v. People*, 61 V.I. 537 (V.I. 2014); *Henley v. People*, 61 V.I. 240 (V.I. 2014); *Cascen v. People*, 60 V.I. 392 (V.I. 2014); *Burke v. People*, 60 V.I. 257 (V.I. 2013); *Hughes v. People*, 59 V.I. 1015 (V.I. 2013);

*Phillip v. People*, 58 V.I. 569 (V.I. 2013); *Tyson v. People*, 59 V.I. 391 (V.I. 2013); *People v. Thompson*, 57 V.I. 342 (V.I. 2012). *Augustine v. People*, 55 V.I. 678 (V.I. 2011)

### ***Practice Note***

The relevant portions of the provisions of 14 V.I.C. § 625(a) are as follows:

(a) A person is guilty of reckless endangerment in the first degree when, under the circumstances evidencing a depraved indifference to human life, he recklessly engages in conduct in a public place which creates a grave risk of death to another person. Reckless endangerment in the first degree shall be considered as a felony.

*See the discussion of the public place requirement under Instruction 50.01.*

### **50.05 Reckless Endangerment in the Second Degree -- Elements**

The defendant is charged with the crime of reckless endangerment in the second degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant recklessly engaged in conduct in a public place which created a substantial risk of serious physical injury to another person; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 625(b)

*See cases cited under the preceding instruction.*

### ***Practice Note***

The relevant portions of the provisions of 14 V.I.C. § 625(b) are as follows:

(b) A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct in a public place which creates a substantial risk of serious physical injury to

another person. Reckless endangerment in the second degree shall be considered as a misdemeanor.

*See the discussion of the public place requirement under Instruction 50.01.*

## Chapter 51. RIOT and UNLAWFUL ASSEMBLY 14 V.I.C. § 1821 - 1826

51.01	Definitions.....	532
51.03	Remaining at Riot or Unlawful Assembly After Warning .....	533
51.05	Refusing to Aid in Suppressing a Riot .....	534

### 51.01 Definitions

For prosecutions under Chapter 91 of the Virgin Islands Code,

A “riot” is—

- (1) any disturbance of the public peace by the use of force or violence to any other person or to property; or
- (2) any threat or attempt to commit such disturbance or to do any unlawful act by the use of force or violence, when accompanied by immediate power of execution—

by three or more persons acting together and without lawful authority.

An “unlawful assembly” is whenever three or more persons—

- (1) assemble with intent to commit any unlawful act by force;
- (2) assemble with intent to carry out any purpose in such a manner as to disturb the public peace; or
- (3) being assembled, attempt or threaten any act tending toward a breach of the peace or an injury to person or property or any unlawful act.

#### Sources & Authority

14 V.I. Code § 1821, § 1823

#### ***Practice Note***

Title 14 V.I.C. § 1823(b) provides that this statute “shall not be construed to prevent the peaceable assembling of persons for lawful purposes of protest or petition.”

### **51.03 Remaining at Riot or Unlawful Assembly After Warning**

The defendant is charged with the crime of remaining at a place of [a riot; an unlawful assembly] after being warned to disperse. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant remained present at the place of [a riot; an unlawful assembly] after the persons assembled were lawfully warned to disperse; and
- (2) Defendant was not a public officer or person assisting them in attempting to disperse the persons assembled; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1825

#### ***Practice Note***

The text of 14 V.I.C. § 1825 is as follows:

#### **§ 1825. Remaining at place of riot or unlawful assembly after warning**

Whoever remains present at the place of an unlawful assembly or riot after the persons assembled have been lawfully warned to disperse and who is not a public officer or person assisting them in attempting to disperse the same, shall be fined not more than \$100 or imprisoned not more than 1 year, or both.

## **51.05 Refusing to Aid in Suppressing a Riot or an Unlawful Assembly**

The defendant is charged with the crime of refusing to aid in suppressing [a riot; an unlawful assembly]. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant was present at the place of [a riot; an unlawful assembly] and was commanded by a duly authorized public officer to [act; aid] [in suppressing the riot or unlawful assembly; in protecting persons or property; in arresting a person guilty or charged with participating in the riot or unlawful assembly], but [neglected; refused] to obey such command; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1826

### ***Practice Note***

The text of 14 V.I.C. § 1826 is as follows:

#### **§ 1826. Refusing to aid in suppressing a riot**

Whoever, being present at the place of an unlawful assembly or riot and being commanded by a duly authorized public officer to act or aid in suppressing the riot, or in protecting persons or property, or in arresting a person guilty or charged with participating in the unlawful assembly or riot, neglects or refuses to obey such command, shall be fined not more than \$100 or imprisoned not more than 90 days, or both.

## Chapter 52. ROBBERY 14 V.I.C. § 1861 - 1864

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### 52.01 Robbery Defined

Robbery is the unlawful taking of personal property in the possession of another, from his person or immediate presence and against his will, by means of force or fear.

#### Sources & Authority

##### 14 V.I. Code § 1861

*Connor v. People*, 59 V.I. 286 (V.I. 2013); *Fontaine v. People*, 56 V.I. 660 (V.I. 2012)

#### ***Practice Note***

**Simplicity of Statute.** The federal courts held half a century ago that the provisions of this section are similar to the common law formulation of the crime of robbery, and at common law robbery required a specific intent to deprive permanently a rightful owner of his property, thus this section would be found to require the same specific intent. The Third Circuit also opined that trial court's instruction to jury as to robbery by verbatim recitation of the statute was sufficient, since the terms of a statute are "simple and self-explanatory." *Gov't of Virgin Islands v. Carmona*, 422 F.2d 95 (3d Cir. 1970).

**Lesser Included Offenses.** The Superior Court has held that a defendant charged with third-degree robbery under 14 V.I.C. §§ 1861 and 1864 for stealing a laptop, could be convicted of the lesser-included offense of grand larceny under 14 V.I.C. § 1083(2), since grand larceny did not contain the element requiring that the value of the property exceed \$100, and did not require proof of any element beyond what was required in proving third-degree robbery. *People v. Jackson*, 2010 V.I. LEXIS 46 (V.I. Super. Ct. June 4, 2010).

**Definition.** Since the above definition is incorporated as the first element in all of the robbery Instructions in this chapter, it may not be necessary or helpful to the jury to instruct separately on the definition.

### **52.03 Robbery in the First Degree**

The defendant is charged with the crime of robbery in the first degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant unlawfully took personal property from the possession of another, from his person or immediate presence and against his will, by means of force or fear; and
- (2) In the course of [the commission of the crime; immediate flight from the scene], [defendant; another perpetrator of this same crime] [caused physical injury which is incapacitating in any way to any person who is not a perpetrator of the crime; displayed, used or threatened the use of a dangerous weapon]; and
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

##### **14 V.I. Code § 1862**

*Percival v. People*, 62 V.I. 477 (V.I. 2015); *Connor v. People*, 59 V.I. 286 (V.I. 2013); *Fontaine v. People*, 56 V.I. 660 (V.I. Supreme 2012).

#### ***Practice Note***

The text of 14 V.I.C. § 1862 is as follows:

##### **§ 1862. Robbery in the first degree**

A person is guilty of robbery in the first degree when, in the course of the commission of the crime or of immediate flight therefrom, he or another perpetrator of the crime:

- (1) Causes physical injury which is incapacitating in any way to any person who is not a perpetrator of the crime; or
- (2) Displays, uses or threatens the use of a dangerous weapon.

Whoever is convicted under this section shall be imprisoned not more than 20 years and if the conviction is a second or subsequent conviction under this chapter, then not less than 7 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, no



portion of the minimum period of imprisonment established by this section shall be suspended, and no person convicted under this section which conviction is a second or subsequent conviction under this chapter shall be placed on probation or be eligible for parole until he shall have been imprisoned for at least 7 years.

**Examples.** The Supreme Court found evidence sufficient to support a conviction for first-degree robbery where the victim testified that defendant demanded money from him at gunpoint and the victim complied by throwing what money he had in the car out of the window to defendant *Percival v. People*, 62 V.I. 477 (V.I. 2015). Similarly, there was sufficient evidence to support a conviction for first-degree robbery where the victim identified defendant as the individual who approaching him at a run while wearing a mask and wielding a firearm, ordered him onto the ground, and snatched a chain from around his neck. *Fontaine v. People*, 56 V.I. 660 (V.I. Supreme 2012).

**Dangerous Weapon.** The Third Circuit held almost 40 years ago that there is nothing in subsection (2) of this section which requires that a handgun treated by the holder and perceived by the victims as a dangerous weapon must be demonstrated by objective evidence to be mechanically capable of inflicting harm. *Gov't of Virgin Islands v. Soto*, 718 F.2d 72 (3d Cir. 1983).

## **52.05 Robbery in the Second Degree**

**The defendant is charged with the crime of robbery in the second degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant unlawfully took personal property from the possession of another, from his person or immediate presence and against his will, by means of force or fear; and**
- (2) That [the defendant was aided by another person actually present; in the course of the commission of the crime or of immediate flight therefrom, the defendant or another participant in the crime caused physical injury to any person who is not a participant in the crime]; and**
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

## Sources & Authority

### 14 V.I. Code § 1863

#### ***Practice Note***

The text of 14 V.I.C. § 1863 is as follows:

#### **§ 1863. Robbery in the second degree**

A person is guilty of robbery in the second degree when he forcibly steals property and when:

- (1) He is aided by another person actually present; or
- (2) In the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime causes physical injury to any person who is not a participant in the crime. Whoever is convicted under this section shall be imprisoned not more than 15 years and if the conviction is a second or subsequent conviction under this chapter, then not less than 2 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, no portion of the minimum period of imprisonment established by this section shall be suspended, and no person convicted under this section which conviction is a second or subsequent conviction under this chapter shall be placed on probation or be eligible for parole until he shall have been imprisoned for at least 2 years.

### **52.07 Robbery in the Third Degree**

The defendant is charged with the crime of robbery in the third degree. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant unlawfully took personal property from the possession of another, from his person or immediate presence and against his will, by means of force or fear; and
- (2) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

## Sources & Authority

### 14 V.I. Code § 1864

#### ***Practice Note***

The text of 14 V.I.C. § 1864 is as follows:

#### **§ 1864. Robbery in the third degree**

Whoever commits robbery under circumstances not amounting to robbery in the first degree or robbery in the second degree is guilty of robbery in the third degree and shall be imprisoned not more than 10 years.

**Lesser Included Offenses.** A decade ago the Superior Court held that a defendant charged with third-degree robbery under 14 V.I.C. §§ 1861 and 1864 for stealing a laptop, could be convicted of the lesser-included offense of grand larceny under 14 V.I.C. §1083(2), since grand larceny did not contain an element requiring that the value of the property exceed \$100, and did not require proof of any element beyond what was required in proving third-degree robbery. *People v. Jackson*, 2010 V.I. LEXIS 46 (V.I. Super. Ct. June 4, 2010).

## Chapter 53. STALKING 14 V.I.C. § 2071 - 2072

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### 53.01 Definitions

For offenses charged in Chapter 104 of the Virgin Islands Code,

(a) “Stalking” means purposely and repeatedly following another person and engaging in a course of conduct or making a credible threat with the intent of annoying or placing that person in reasonable fear of death or bodily harm or injury and causing emotional distress.

(b) “Credible threat” means an explicit or implicit threat made with the intent and the apparent ability to carry out the threat, so as to cause the targeted person to reasonably fear for personal safety or the safety of a family member.

(c) “Course of conduct” means an act that happens more than once, however brief, within a year, directed at a specific person, evidencing a continuity of purpose which would cause a reasonable person to suffer substantial emotional distress; which includes but is not limited to the stalker’s directly or indirectly, by any action, method or device, following, monitoring, observing, pursuing, threatening or communicating to or about a person or interfering with a person’s property.

(d) “Harassment” means engaging in a knowing and intentional course of conduct directed at a specific person which alarms annoys torments or terrorizes the person and would cause a reasonable person to suffer emotional distress.

(e) “Cyberstalk” means to communicate, or to cause to be communicated, words, images, or language through the use of electronic mail or electronic communication directed to a specific person which serves no legitimate purpose, but causes that person substantial emotional distress.

### Sources & Authority

14 V.I. Code § 2071

### ***Practice Note***

The text of 14 V.I.C. § 2071 is set forth verbatim in the above definitional Instruction.

### **53.03 Stalking**

The defendant is charged with the crime of stalking. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant purposely and repeatedly followed another person and [engaged in a course of conduct; made a credible threat] **with the intent of** [annoying; placing that person in reasonable fear of death; placing that person in reasonable fear of bodily harm; placing that person in reasonable fear of injury]; **and**
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 2072(a)

#### ***Practice Note***

The text of 14 V.I.C. § 2072(a) is as follows:

**§ 2072. Stalking prohibited; degrees of offense; punishment**

(a) A person is guilty of the crime of stalking who purposely and repeatedly follows another person and engages in a course of conduct or makes a credible threat with the intent of annoying or placing that person in reasonable fear of death or bodily harm or injury. Any person convicted of the crime of stalking shall be imprisoned for a period not to exceed 18 months, or may be fined up to \$7,500, or both.

**Picketing Exemption.** The statute in subsection (e) expressly provides that the stalking prohibition does not apply “to conduct which occurs during organized group picketing.”

**Example.** In a modern Superior Court case, a police officer was not entitled to acquittal on charges of stalking the victim, a co-worker who had previously dated defendant. *People v. Williams*, 2019 V.I. LEXIS 77 (V.I. Super. Ct. July 25, 2019).

## **53.05 Aggravated Stalking**

The defendant is charged with the crime of aggravated stalking. The People must prove beyond a reasonable doubt each of the following elements of that crime:

(1) The defendant purposely and repeatedly followed another person and [engaged in a course of conduct; made a credible threat] **with the intent of** [annoying; placing that person in reasonable fear of death; placing that person in reasonable fear of bodily harm; placing that person in reasonable fear of injury]; **and**

(2) Defendant's actions

*\* Select element(s) charged in this case \**

- ... violated an existing court order prohibiting the behavior;
- ... included the crime of, or the attempt to commit [murder in any degree; voluntary manslaughter; rape; arson; discharging or aiming firearms; mayhem; kidnapping; assault in any degree; robbery; burglary; unlawful entry; larceny];

**and**

(2) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 2072

### ***Practice Note***

The text of 14 V.I.C. § 2072 is as follows:

#### **§ 2072. § 2072. Stalking prohibited; degrees of offense; punishment**

(a) A person is guilty of the crime of stalking who purposely and repeatedly follows another person and engages in a course of conduct or makes a credible threat with the intent of annoying or placing that person in reasonable fear of death or bodily harm or injury. Any person convicted of the crime of stalking shall be imprisoned for a period not to exceed 18 months, or may be fined up to \$7,500, or both.

(b) A person who commits a second or subsequent offense of stalking shall be imprisoned for a period not to exceed 5 years, or may be fined up to \$15,000, or both and shall be required to obtain psychological or emotional assistance as determined by the court. Provided, however, a person who is convicted of a third or subsequent offense, shall be imprisoned for not less than one month and not more than 5 years, or may be fined up to \$15,000, or both.

(c) A person is guilty of the crime of aggravated stalking who commits the crime of stalking in violation of an existing court order prohibiting the behavior and shall be imprisoned for a period not to exceed 5 years, or may be fined up to \$15,000, or both.

(d) A person is guilty of the crime of aggravated stalking who commits the crime of stalking which involves a crime of violence as defined in Title 23, section 451, subsection (e) of this code and shall be imprisoned for a period not to exceed 5 years, or may be fined up to \$15,000, or both.

**Crimes of Violence.** The provisions of 23 V.I.C. § 453(e) are the source of the categories of offenses set forth in optional Element 2[B] of this Instruction.

**Contempt and Aggravated Stalking.** If criminal contempt for stalking requires proof of a fact that aggravated stalking does not, and aggravated stalking requires proof of a fact that criminal contempt for stalking does not, then they are not the same under the test established in *Blockburger v. United States*, 284 U.S. 299, 304 (1932). *Virgin Islands v. Crossley*, 35 V.I. 100 (Terr. Ct. 1997).

## Chapter 54. STOLEN PROPERTY OFFENSES 14 V.I.C. § 2101 - 2103

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54.03	Inference from Unexplained Possession.....	545

### 54.01 Buying, Receiving or Possessing Stolen Property

The defendant is charged with the crime of [buying; receiving; possessing] stolen property. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [bought; received; possessed; concealed; sold; withheld; aided in concealing; aided in selling; aided in withholding] **any property which has been obtained in any unlawful manner; and**
- (2) Defendant [knew; had cause to believe] **the property to have been** [stolen; illegally obtained]; **and**
- (3) **This conduct took place on or about** *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### Sources & Authority

14 V.I. Code § 2101

*Thomas v. People*, 69 V.I. 913 (V.I. 2018); *Codrington v. People*, 57 V.I. 176 (V.I. 2012)

#### ***Practice Note***

The text of 14 V.I.C. § 2101 is as follows:

#### **§ 2101. Buying, receiving or possessing stolen property**

Any person who buys, receives or possesses any property which has been obtained in any unlawful manner, knowing or having cause to believe the property to have been so unlawfully obtained, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing or having cause to believe the property to be so stolen or illegally obtained shall—



(a) if the property received, bought or possessed shall be of the value of \$500 or upward, be imprisoned for not more than 10 years or be fined not more than \$7,000, or both; or

(b) if the property received, bought, or possessed shall be of a value of less than \$500, be fined not more than \$2,000 or imprisoned not more than one year, or both.

**Identify of the Thief.** The Supreme Court has held that § 2101(a) does not expressly or impliedly require that someone other than the defendant charged with possession of stolen property must be the culprit who stole the property at issue. Thus, the People were not required to prove that someone other than defendant stole the electronic tablet in question. *Thomas v. People*, 69 V.I. 913 (V.I. 2018).

**Examples.** There was sufficient evidence to support defendant's conviction for possession of stolen property, in violation 14 V.I.C. § 2101, based on possession of stolen items shortly after they were taken, proximity to the location of the theft, and furtive behavior in attempting to evade the victim. *Codrington v. People*, 57 V.I. 176 (V.I. 2012); *see also Thomas v. People*, 69 V.I. 913 (V.I. 2018) (property tracked by telephone).

### **54.03 Inference from Unexplained Possession**

**If any person is brought before a court and charged with having in his possession or conveying in any manner anything which may be reasonably suspected of being stolen or unlawfully obtained and cannot give an account to the satisfaction of the court how he came by the same, an inference may be drawn that the person in possession of such property knew the property had been stolen.**

#### **Sources & Authority**

**14 V.I. Code § 2102**

#### ***Practice Note***

The text of 14 V.I.C. § 2102(b) is set forth verbatim in the above instruction.

The United States Supreme Court has held that a provision such as this statute is not an infringement on the accused's right against self-incrimination, and while the practical effect of allowing the inference from unexplained possession may in many cases be to shift the burden of coming forward with the evidence, at least as to receiving stolen goods and the inference of guilty knowledge, it is permissible so long as the inference is considered in accordance with the burden on the prosecution to establish every element of the crime beyond a reasonable doubt. *Barnes v. United States*, 412 U.S. 835, 846 & n. 11 (1973). *See also United States v. Suggs*, 230 Fed. Appx. 175, 184 (3<sup>rd</sup> Cir. 2007)(approving a similar instruction).

## Chapter 55. TRESPASS and RELATED OFFENSES 14 V.I.C. §§ 1741-50

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### 55.01 Trespass

The defendant is charged with the crime of trespass. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant entered upon the land of another without the consent of [the owner; the person in charge thereof]; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### Sources & Authority

14 V.I. Code § 1741(a)

#### ***Practice Note***

The text of 14 V.I.C. § 1741(a) is as follows:

##### § 1741. Trespass

(a) Whoever enters upon the land of another without the consent of the owner or of the person in charge thereof, shall be fined not more than \$50 or imprisoned not more than 30 days, or both.

### **55.03 Trespass on Premises of a Domestic Violence Center**

The defendant is charged with the crime of trespass on the [land; premises] of a domestic violence center. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant entered upon the [land; premises] of a domestic violence center without the consent of the [owner; operator; person in charge] of the domestic violence center; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1741(b)

#### ***Practice Note***

The text of 14 V.I.C. § 1741(b) is as follows:

#### **§ 1741. Trespass**

\* \* \* \*

(b) Whoever enters upon the land or premises of a domestic violence center without the consent of the owner, operator or person in charge of the domestic violence center, shall be sentenced to not less than one year, but not more than three years.

## **55.05 Trespass to Remove or Deface Property**

The defendant is charged with the crime of trespassing to [remove; deface] property. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

- ... [cut down; destroyed; injured; carried away] any kind of wood or timber growing upon [the lands of another; public lands];
- ... [injured; destroyed] [any standing crop; fruits; vegetables; the property of another], acting maliciously, meaning intentionally and without just cause or excuse, consciously violating the law;
- ... [dug; took; carried away] from any real estate, without the license of the [owner; legal occupant] thereof, any [earth; soil; stone];
- ... [dug; took; carried away] any [earth; soil; stone] from any land of the Government of the Virgin Islands, [recognized; established] as a [street; road; alley; avenue; park] without the license of the proper authorities;
- ... [put up; affixed; fastened; printed; painted upon] any property [belonging to the Government of the Virgin Islands; dedicated to the public; of any person], without license from the owner, any [notice; advertisement; designation of, or any name for, any commodity, whether for sale or otherwise; any picture, sign or device intended to call attention thereto];

**and**

**(2) Defendant acted willfully, meaning on purpose or willingly; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

14 V.I. Code § 1742

### ***Practice Note***

The text of 14 V.I.C. § 1742 is as follows:

**§ 1741. Trespass to remove or deface property**

Whoever willfully commits any trespass by—

- (1) cutting down, destroying or injuring any kind of wood or timber growing upon the lands of another or upon public lands;
- (2) carrying away any kind of wood or timber lying on such lands;
- (3) maliciously injuring or destroying any standing crop, fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this Code;
- (4) digging, taking or carrying away from any real estate, without the license of the owner or legal occupant thereof, any earth, soil or stone;
- (5) digging, taking or carrying away any earth, soil or stone from any land of the Government of the Virgin Islands, recognized or established as a street, road, alley, avenue or park, without the license of the proper authorities, or;
- (6) putting up, affixing, fastening, printing or painting upon any property belonging to the Government of the Virgin Islands, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement or designation of, or any name for, any commodity, whether for sale or otherwise, or any picture, sign or device intended to call attention thereto—

shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

**Willful Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “willful” or “willfully” mean that the actor had “simply a purpose or willingness to commit the act, or make the omission.” Thus it means to act on purpose or willingly. Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

## **55.07 Removing or Defacing Boundary Markers**

The defendant is charged with the crime of [removing; defacing] boundary markers. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... [removed; defaced; altered] any monument erected for the purpose of designating [any point in the boundary of any lot or tract of land; a place where a subaqueous telegraph cable lies];

... [cut down; removed] any tree upon which any marks had been made for the purpose of designating any point in the boundary of any lot or tract of land, with intent to destroy such marks;

**and**

**(2) Defendant acted maliciously, meaning intentionally and without just cause or excuse, consciously violating the law; and**

**(3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1746

### ***Practice Note***

The text of 14 V.I.C. § 1746 is as follows:

**§ 1746. Removing or defacing boundary markers**

Whoever—

(1) maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land, or a place where a subaqueous telegraph cable lies;

(2) maliciously defaces or alters the marks upon any such monument; or

(3) maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks—

shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

**Malicious Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the terms “malice” or “maliciously” mean “the doing of a wrongful act, intentionally, without just cause or excuse; a conscious violation of the law to the prejudice of another.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

## **55.07 Forcible and Unlawful Entry**

The defendant is charged with the crime of forcible and unlawful entry on property. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... used [force; violence] in [entering upon; detaining] any [lands; property], public or private;

... entered another's domicile without the consent of the tenant;

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1747

### ***Practice Note***

The text of 14 V.I.C. § 1747 is as follows:

**§ 1747. Forcible and unlawful entry**

Whoever—

(1) uses force or violence in entering upon or detaining any lands or other property, public or private; or

(2) enters another's domicile without the consent of the tenant—

shall, except in the cases and in the manner prescribed by law, be fined not more than \$200 or imprisoned not more than 1 year, or both.

**55.09 Returning to Land After Removal by Lawful Process**

The defendant is charged with the crime of returning to land after being removed by lawful process. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant was [removed from any lands by process of law; removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer]; **and**
- (2) Defendant unlawfully returned to [settle; reside upon; take possession of] such lands; **and**
- (3) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

**Sources & Authority**

14 V.I. Code § 1748

***Practice Note***

The text of 14 V.I.C. § 1748 is as follows:

**§ 1748. Returning to lands after removal by lawful process**

Whoever—

(1) having been removed from any lands by process of law; or

(2) having removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer—



unlawfully returns to settle, reside upon or take possession of such lands shall be fined not more than \$200 or imprisoned not more than 1 year, or both.

### **55.11 Unauthorized Presence on School Premises**

The defendant is charged with the crime of unauthorized presence on school premises. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant was present on the premises of any public or private school at any time, whether on the school grounds or in a school building, without lawful purpose or authority; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1749

#### ***Practice Note***

The text of 14 V.I.C. § 1749 is as follows:

##### **§ 1749. Unauthorized presence on school premises**

(a) Whoever is present on the premises of any public or private school at any time, whether on the school grounds or in a school building, without lawful purpose or authority, shall be fined not less than \$300 nor more than \$1,000 and be imprisoned for a mandatory minimum term of six months. A sentence for conviction on any other count for the same incident of unauthorized presence, such as vandalism, theft or assault, shall be served consecutively rather than concurrently. Notwithstanding any other provision of law with respect to any person sixteen years of age or over who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to

serving the mandatory minimum term of imprisonment prescribed by this section.

(b) In cases where a person under 16 years of age is found to have violated this section, the sentencing court may, in addition to such other disposition as it may order, require the violator to perform manual labor on the school premises involved, which labor may include grasscutting, painting, litter gathering, janitorial and other duties, for such period of time as the court deems appropriate.

### **55.13 Impersonating a Student on School Premises**

The defendant is charged with the crime of impersonating a student on school premises. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant was present on the premises of any public or private school, whether on the school grounds or in a school building, without lawful purpose or authority; and
- (2) Defendant gained entry unto such school grounds or premises by wearing the official school uniform of that school, thus, impersonating a student;
- (3) While present on such school grounds, the defendant committed an offense covered under the criminal code of the Virgin Islands; and
- (4) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1750

#### ***Practice Note***

The text of 14 V.I.C. § 1750 is as follows:

##### **§ 1750. Impersonating a student on school premises**

(a) Any person who is present on the premises of any public or private school, whether on the school grounds or in a school building, without lawful purpose or authority, and who gains entry

unto such school grounds or premises by wearing the official school uniform of that school, thus, impersonating a student, and who commits an offense covered under the criminal code of the Virgin Islands, shall be fined not less than \$500 nor more than \$2,500 and may be imprisoned for a term of up to six months. A sentence of conviction on any other count for the same incident of unauthorized presence while impersonating a student shall be served consecutively rather than concurrently. Notwithstanding any other provision of law, with respect to any person sixteen years or over who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section.

(b) Persons under 16 years of age who are found to be in violation of this section shall be referred for counseling, under the auspices of the Department of Human Services, if no other violation has occurred, and may be required to perform community service for a term of 6 months at the school in which the violation occurred or at some other location as determined by the court. If a conviction on any other violation, such as theft, vandalism or assault, is obtained, the court may, in its discretion, require commitment to the juvenile correctional facility in lieu of or in conjunction with, referral for counseling.

## Chapter 56. VAGRANCY 14 V.I.C. § 2221

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### 56.01 Vagrancy

The defendant is charged with the crime of vagrancy. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) That the defendant**

- ... being able by lawful means to support (himself; herself) or (his; her) spouse or children, willfully refused or neglected to do so;
- ... being a common prostitute, wandered in the public streets or highways, or in any place of public resort and behaved in a riotous and indecent manner;
- ... being in any street, highway or public place, accosted a stranger and offered to take him to the house or residence of a prostitute;
- ... being a common prostitute or nightwalker, loitered in any street or highway and importuned passengers for the purpose of prostitution;
- ... being in any street, highway or public place, [accosted a stranger; followed (him; her) about], without lawful authority or excuse;
- ... pretended or professed to tell fortunes by palmistry, “obeah” or any such like superstitious means, or used or pretended to use any subtle craft or device, in order to deceive and impose upon other persons;
- ... lived in or loitered about houses of ill fame;
- ... annoyed or molested any child under the age of 18 years;
- ... willfully (meaning on purpose or willingly) exposed to view in any street, road, highway or public place, or in the window or other part of any shop or other building situated in any street, road, highway or public place, any obscene print, picture or other indecent exhibition;
- ... willfully (meaning on purpose or willingly), openly and obscenely exposed (his; her) person in any public street, road, highway or place of public resort, or in view thereof;
- .... wandered abroad and endeavored by the exposure of wounds and deformities to obtain or gather alms;

- ... endeavored to procure charitable contributions under any false or fraudulent pretenses;
- ... had in his custody any picklock, key, crow, jack, bit or other implement with intent to break into any dwelling house, warehouse, store, shop, coachhouse, stable, garage or outbuildings;
- ... was unlawfully armed with any gun, pistol, hanger, cutlass, bludgeon or other offensive weapon;
- ... loitered or remained in or about a school, college or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same;
- ... loitered or remained in or about any public building or facility, including a local or federal government building, a warehouse, place of business or worship, transportation facility, hotel or guesthouse, without apparent legitimate purpose or business therein and, in so doing, obstructs or interferes with the legitimate business of another person, or intentionally annoys or harasses such other person;
- ... had upon (him; her) any instrument with intent to commit any felonious act;

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 2221(a)**

### ***Practice Note***

The text of 14 V.I.C. § 2221(a) is as follows:

**§ 2221. Miscellaneous acts of vagrancy**

(a) Whoever—

- (1) being able by lawful means, to support himself or his spouse or his or her children, willfully refuses or neglects to do so; or
- (2) being a common prostitute, wanders in the public streets or highways, or in any place of public resort and behaves in a riotous and indecent manner; or
- (3) being in any street, highway or public place, accosts a stranger and offers to take him to the house or residence of a prostitute; or
- (4) being a common prostitute or nightwalker, loiters in any street or highway and importunes passengers for the purpose of prostitution; or
- (5) being in any street, highway or public place, accosts a stranger or follows him about, without lawful authority or excuse; or
- (6) pretends or professes to tell fortunes by palmistry, "obeah" or any such like superstitious means, or uses or pretends to use any subtle craft or device, in order to deceive and impose upon other persons; or
- (7) lives in or loiters about houses of ill fame; or
- (8) annoys or molests any child under the age of 18 years; or
- (9) willfully exposes to view in any street, road, highway or public place, or in the window or other part of any shop or other building situated in any street, road, highway or public place, any obscene print, picture or other indecent exhibition; or
- (10) willfully, openly and obscenely exposes his person in any public street, road, highway or place of public resort, or in view thereof; or
- (11) wanders abroad and endeavors by the exposure of wounds and deformities to obtain or gather alms; or
- (12) endeavors to procure charitable contributions under any false or fraudulent pretenses; or
- (13) has in his custody any picklock, key, crow, jack, bit or other implement with intent to break into any dwelling house, warehouse, store, shop, coachhouse, stable, garage or outbuildings; or
- (14) is unlawfully armed with any gun, pistol, hanger, cutlass, bludgeon or other offensive weapon; or
- (15) loiters or remains in or about a school, college or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there,

and not having written permission from anyone authorized to grant the same; or

(16) loiters or remains in or about any public building or facility, including a local or federal government building, a warehouse, place of business or worship, transportation facility, hotel or guesthouse, without apparent legitimate purpose or business therein and, in so doing, obstructs or interferes with the legitimate business of another person, or intentionally annoys or harasses such other person; or

(17) has upon him any instrument with intent to commit any felonious act—

shall be deemed a vagrant and shall be fined not more than \$5,000 or imprisoned not more than 90 days, or both.

**Constitutionality.** Over four decades ago, the federal district court held that the provision of this section making it an offense to loiter or remain in or about any public building or facility without apparent legitimate purpose or business, and in doing so to obstruct or interfere with the legitimate business of another or intentionally annoy or harass such other person, is valid. *Gov't of the V.I. v. Paris*, 1973 U.S. Dist. LEXIS 5208 (D.V.I. 1973). See also *Gov't of V.I. v. Rodriguez*, 300 F. Supp. 860 (D.V.I. 1969), aff'd, 423 F.2d 9 (3d Cir. 1970).

**Fortune Telling.** Years ago, the Attorney General opined that the statutory prohibition of fortune-telling is directed at graphology, numerology and mind-reading, making such practices are in violation of local law. 1 V.I. Op. Att'y Gen. 229.

**Carrying signs.** Statutes prohibiting loitering, public nuisances, and the carrying on public sidewalks of any objects which might expose pedestrians to injury or which might obstruct their passage, are not applicable to the carrying of hand-held advertising signs on public streets and sidewalks, according to an opinion of the Attorney General years ago. 8 V.I. Op. Att'y Gen. 146.

### **56.03 Vagrancy After Warning**

**The defendant is charged with the crime of vagrancy after warning. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) That the defendant loitered or knowingly remained in or about** [any public accommodation, or facility, including a local or federal government building; a warehouse; a place of business or worship; a transportation facility; a hotel or guesthouse; a street or highway where a controlled substance or drug paraphernalia is unlawfully present, being used or sold without legitimate purpose] **after being warned by a law enforcement officer to immediately vacate the area; and**
- (2) This conduct took place on or about <date> in** [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 2221(b)

### ***Practice Note***

The text of 14 V.I.C. § 2221(b) is as follows:

**§ 2221. Miscellaneous acts of vagrancy**

\* \* \* \*

(b) Whoever loiters or knowingly remains in or about any public accommodation, or facility, including a local or federal government building, a warehouse, place of business or worship, transportation facility, hotel or guesthouse, or street or highway where a controlled substance or drug paraphernalia is unlawfully present, being used or sold without legitimate purpose, after being warned by a law enforcement officer to immediately vacate the area, shall be subject to a fine of not more than \$ 1,500 or imprisoned for not more than 1 year, or both.



## Chapter 57. VEHICULAR THEFT, DAMAGE OR USE 14 V.I.C. § 1381-90

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### **57.01 Definition of Vehicle under the Vehicle Anti-Theft Act**

“Vehicle” means a device in, upon, or by which a person or property is or may be transported or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracks, and also means any watercraft of any description, whether motorized or not.

#### **Sources & Authority**

14 V.I. Code § 1381

#### ***Practice Note***

The text of 14 V.I.C. § 1381 is set forth verbatim in the definitional Instruction above.

**Evidentiary Statute on Prior Acts.** In 14 V.I.C. § 1387 the Legislature has provided that in any prosecution under the Vehicle Anti-Theft Act (Chapter 69 of Title 14), “evidence that the defendant has committed a prior act or acts of the same kind is admissible to prove criminal intent or knowledge,” thus overriding the “prior bad acts” proof prohibition that generally applies under Virgin Islands Rule of Evidence 404(b).

**Aiders and Abettors as Principals.** Under § 1388 of Title 14, any “person who, whether present or absent, aids, abets, induces, procures or causes the commission of an act which, if done directly by him, would be a felony or a misdemeanor under a provision of this chapter, is guilty of the same felony or misdemeanor.”

### **57.03 Unauthorized Use of a Vehicle**

The defendant is charged with the crime of unauthorized use of a vehicle. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [took; used; drove] the vehicle of another; and
- (2) Defendant was not entitled to possession of the vehicle; and
- (3) Defendant did not have the consent of the owner of the vehicle; and
- (4) Defendant had the intent to deprive the owner of the vehicle or its possession, temporarily or permanently; and
- (5) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

#### **Sources & Authority**

14 V.I. Code § 1382

#### ***Practice Note***

The text of 14 V.I.C. § 1382 is as follows:

##### **§ 1382. Unauthorized use of vehicle**

A person not entitled to possession of a vehicle who, without the consent of the owner and with intent to deprive him, temporarily or otherwise, of the vehicle or its possession, takes, uses or drives the vehicle is guilty of a felony.

**Example.** There was sufficient evidence to support a conviction for unauthorized use of a vehicle where the victim testified she voluntarily gave defendant keys to her car, but also testified that she did so only after he physically attacked her, since it could have been found that her consent was not genuine. *Webster v. People*, 60 V.I. 666 (V.I. 2014).

## **57.05 Receiving or Disposing of a Stolen Vehicle**

The defendant is charged with the crime of receiving or disposing of a stolen vehicle. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant [received, possessed, concealed, sold; disposed of] a vehicle, knowing it had been stolen or converted under circumstances constituting a crime; and
- (2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1383

### ***Practice Note***

The text of 14 V.I.C. § 1383 is as follows:

#### **§ 1383. Receiving or disposing of a vehicle**

A person, not entitled to the possession of a vehicle who receives, possesses, conceals, sells or disposes of it, knowing it to be stolen or converted under circumstances constituting a crime, is guilty of a felony.

## **57.07 Damaging or Tampering with a Vehicle**

The defendant is charged with the crime of [damaging; tampering with] a vehicle. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant

*\* Select element(s) charged in this case \**

... [damaged; removed any parts or components of] a vehicle intentionally and with no right to do so;

... with no right to do so, and with intent to commit a crime [tampered with; entered into or upon a vehicle; worked on or attempted to work on any

parts or components of a vehicle; set or attempted to set a vehicle in motion];

and

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1384**

#### ***Practice Note***

The text of 14 V.I.C. § 1384 is as follows:

**§ 1384. Damaging or tampering with a vehicle**

(a) A person who, with intent and without right to do so, damages a vehicle or damages or removes any of its parts or components is guilty of a misdemeanor.

(b) A person who, without right to do so and with intent to commit a crime, tampers with a vehicle, or goes in or on it, or works or attempts to work any of its parts or components, or sets or attempts to set it in motion, is guilty of a misdemeanor.

### **57.09 False Report of Theft or Conversion of a Vehicle**

**The defendant is charged with the crime of making a false report of the theft or conversion of a vehicle. The People must prove beyond a reasonable doubt each of the following elements of that crime:**

- (1) The defendant made a false report of the theft or conversion of a vehicle to a peace officer or to the U.S. Virgin Islands Police Department; and**
- (2) Defendant acted knowingly, meaning that (he; she) knew what (he; she) was doing at the time (he; she) acted, not necessarily knowing it was illegal; and**
- (3) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### Sources & Authority

14 V.I. Code § 1385

#### ***Practice Note***

The text of 14 V.I.C. § 1385 is as follows:

**§ 1385. False report of theft or conversion**

A person who knowingly makes a false report of the theft or conversion of a vehicle to a peace officer or to the U.S. Virgin Islands Police Department (V.I.P.D.) is guilty of a misdemeanor.

**Knowing Action.** Under the omnibus definitional section of the criminal title of the Virgin Islands Code, 14 V.I.C. § 41, unless a particular criminal statute defines the term differently, or “the context requires a different construction,” the term “knowingly” “imports a personal knowledge; but it does not require any knowledge of the unlawfulness of an act or omission.” Since there is no specialized definition of this term in the Chapter of the V.I. Code to which the present Instruction relates – and there is none in the specific Code section setting forth the elements of this offense in particular – the general definition adopted by the Legislature in § 41 is the source of the language in Element (2) of the above Instruction.

### **57.11 Removing, Falsifying or Using Unauthorized Identification Numbers, Registration or Licenses on Vehicle or Engine**

The defendant is charged with the crime of removing, falsifying or using unauthorized identification numbers, registration or licenses on a vehicle or engine. The People must prove beyond a reasonable doubt each of the following elements of that crime:

**(1) The defendant**

*\* Select element(s) charged in this case \**

... willfully [removed; falsified] an identification number of [a vehicle; an engine for a vehicle];

... willfully and with intent to [conceal; misrepresent] the identity of a [vehicle; engine], [removed; falsified] an identification number of the [vehicle; engine];

- ... [bought; received; possessed; sold; disposed] of [a vehicle; an engine for a vehicle], knowing that an identification number of the [vehicle; engine] has been [removed; falsified];
- ... [bought; received; possessed; sold; disposed of] [a vehicle; an engine for a vehicle], knowing that an identification number of the [vehicle; engine] has been [removed; falsified] and with intent to [conceal; misrepresent] the identity of the [vehicle; engine];
- ... [removed a registration or license plate from a vehicle; affixed to a vehicle a registration or license plate not authorized by law for use on it] with intent to [conceal; misrepresent] the identity of the [vehicle; the owner of the vehicle];

**and**

**(2) This conduct took place on or about <date> in [this judicial division; <name of judicial division>].**

**If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.**

**If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.**

### **Sources & Authority**

**14 V.I. Code § 1386(a)-(e)**

### ***Practice Note***

The text of 14 V.I.C. § 1386(a)-(e) is as follows:

**§ 1386. Removed, falsified or unauthorized identification numbers, registration or licenses on vehicle or engine**

(a) A person who wilfully removes or falsifies an identification number of a vehicle or an engine for a vehicle is guilty of a misdemeanor.

(b) A person who, wilfully and with intent to conceal or misrepresent the identity of a vehicle or engine, removes or falsifies an identification number of the vehicle or engine, is guilty of a felony.

(c) A person who buys, receives, possesses, sells or disposes of a vehicle or an engine for a vehicle, knowing that an identification number of the vehicle or engine has been removed or falsified, is guilty of a misdemeanor.

(d) A person who buys, receives, possesses, sells or disposes of a vehicle or an engine for a vehicle, knowing that an identification number of the vehicle or engine has been removed or falsified and with intent to conceal or misrepresent the identity of the vehicle or engine, is guilty of a felony.

(e) A person who removes a registration or license plate from a vehicle or affixes to a vehicle a registration or license plate not authorized by law for use on it, in either case with intent to conceal or misrepresent the identity of the vehicle or its owner, is guilty of a misdemeanor.

**Official Actions.** Under subsection (g) of the statute, an identification number may be placed on a vehicle or engine by its manufacturer in the regular course of business or placed or restored on a vehicle or engine by authority of the U.S. Virgin Islands Police Department without violating this section; an identification number so placed or restored is not falsified.

### **57.13 Definitions for Removing, Falsifying or Using Unauthorized Identification Numbers, Registration or Licenses on Vehicle or Engine**

For the crime of removing, falsifying or using unauthorized identification numbers, registration or licenses on a vehicle or engine, the following definitions apply:

- (1) "Identification number" includes an identifying number, serial number, engine number or other distinguishing number or mark, placed on a vehicle or engine by its manufacturer or by authority of the U.S. Virgin Islands Police Department or in accordance with the laws of another state or country;
- (2) "Remove" includes deface, cover and destroy;
- (3) "Falsify" includes alter and forge.

#### **Sources & Authority**

14 V.I. Code § 1386(f)

#### ***Practice Note***

The text of 14 V.I.C. § 1386(f) is set forth verbatim in the above definitional Instruction.

## **57.15 Leaving the Scene of an Accident**

The defendant is charged with the crime of leaving the scene of an accident. The People must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) The defendant knew that by the operation of a motor vehicle (he; she) had injured any person; and
- (2) Defendant failed to remain at the place where the injury occurred to render assistance to the injured person; and
- (3) This conduct took place on or about *<date>* in [this judicial division; *<name of judicial division>*].

If you find from the evidence that the People have proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty.

If you find that the People have failed to prove beyond a reasonable doubt any one or more of the elements of the crime, then you shall find the defendant not guilty.

### **Sources & Authority**

14 V.I. Code § 1389

### ***Practice Note***

The text of 14 V.I.C. § 1389 is as follows:

#### **§ 1389. Leaving scene of accident**

Whoever, knowing that he has by the operation of a motor vehicle injured any person, fails to remain at the place where the injury occurred to render assistance to the injured person, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both.