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## Pattern Jury Instructions

The Washington Pattern Instructions (WPI) Committee is pleased to announce that the state's pattern jury instructions are available to the public on a free web-site. This free public access is provided by agreement between the WPI Committee and Thomson/West Publishing.

The text of all the instructions, Notes on Use, and Comments are included on the new free web-site, which is being operated by Thomson/West. Users will be able to navigate through a table of contents to find the instructions they need. Search is not available on the free site.

### Washington Pattern Jury Instructions:

<http://government.westlaw.com/linkedslice/default.asp?SP=West-1000>

*Cited in USA v. Robinson  
No. 16-30096, archived on August 22, 2017*

**Questions?** Contact: [JuryInstructions@courts.wa.gov](mailto:JuryInstructions@courts.wa.gov)

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## Washington Pattern Jury Instructions

Welcome to the newly enhanced site for the Washington Pattern Jury Instructions. This site has been upgraded to assure you a positive Thomson Reuters Westlaw experience. This website is maintained by [Thomson Reuters](#) under contract with the Washington Supreme Court Committee on Jury Instructions to provide free public access to the full text of the Washington Pattern Jury Instructions. You may access the online Washington Pattern Jury Instructions through the following links:

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This site from Thomson Reuters provides free access to the Washington Pattern Jury Instructions-Civil (Volumes 6 and 6A of the Washington Practice Series™), © 2013 Thomson/West, and the Washington Pattern Jury Instructions-Criminal (Volumes 11 and 11A of the Washington Practice Series™), © 2011 Thomson Reuters/West. This material is intended for use in the practice of law and legal research. Any other use of the materials, including commercial re-use is prohibited.

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No. 16-30096, *Robinson*  
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*WPIC 0.10 Introduction to Washington's Pattern Jury Instructions for Criminal Cases* Washington Practice Series  
TM

Washington Pattern Jury Instructions--Criminal  
11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 0.10 (4th Ed)

Washington Practice Series TM  
Washington Pattern Jury Instructions--Criminal  
October 2016 Update

Washington State Supreme Court Committee on Jury Instructions

Part I. General Instructions  
WPIC CHAPTER 0. Introduction to WPIC

## WPIC 0.10 Introduction to Washington's Pattern Jury Instructions for Criminal Cases

This introduction provides background information about Washington's criminal pattern jury instructions and how they are best used.

**Overview of material.** Washington's pattern jury instructions for criminal cases are found in Volumes 11 and 11A of the Washington Practice series of books, through Westlaw (www.westlaw.com), and via a free-access public website (<http://government.westlaw.com/linked/ice/default.asp?SP=WCCJL-1000>) comparing each instruction to a Note on Use, which addresses the instruction's scope and applicability, and a Comment which summarizes the underlying law. Comments are not intended to address all issues for the particular area of law, only instruction-related issues.

The chapters in Parts I through III deal with issues of general applicability, including the stages of a criminal trial, common definitions, the burden of proof, lesser included offenses, elements of the crime, frequently used oral instructions, evidentiary issues, and principles of jury duty. Parts IV through XIII set forth pattern instructions that apply more specifically to particular criminal charges and defenses. Parts XIV and XV contain the concluding pattern instructions and verdict forms. And finally, Part XVI covers the pattern instructions for the jury's findings as to aggravating circumstances for the imposition of exceptional sentences under the Sentencing Reform Act.

Several appendices provide additional information for practitioners. For example:

Appendix D illustrates how the pattern instructions can be compiled for a few typical cases and fact situations. For example, the Appendix begins by showing how the pattern instructions might be assembled for a case involving a single defendant charged with second degree burglary. Additional compilations of instructions, supplemented with commentary, are found in Fine, 11B Washington Practice, Criminal Jury Instruction Handbook (15–16).

Several of the chapters begin with an introduction that covers some of the more general points of law underlying the chapter's instructions. Users of a particular instruction are encouraged to carefully review the instruction's entire chapter, including any introductory material.

**Nature of pattern instructions.** The pattern instructions are not authoritative primary sources of the law; rather, they restate otherwise existing law for jurors. The pattern instructions do not receive advance approval from any court, although they are often treated as "persuasive." See, e.g., State v. Mills, 116 Wn.App. 106, 64 P.3d 1253 (2003), reversed on other grounds, 154 Wn.2d 1, 109 P.3d 415 (2005). Judicial review of the instructions instead occurs after the fact, when individual instructions are reviewed in appellate opinions. The pattern instructions are not binding on trial courts; they are intended to guide trial courts in drafting appropriate instructions for individual cases.

**Use of pattern jury instructions—In general.** The committee writes pattern jury instructions to assist the trial judge and the attorneys in preparing clear, accurate, and balanced jury instructions for individual criminal cases. Pattern instructions are examples that apply to a general category of cases, rather than an exact blueprint for use in every individual case. They provide a neutral starting point for the preparation of instructions that are individually tailored for a particular case. Trial judges and attorneys must consider whether modifications are needed to fit the individual case.

Sometimes, this process can involve adding new language for points not addressed in the pattern instructions: it can mean omitting language that does not apply to an individual case; it can involve substituting more specific language for the necessarily general language of a pattern instruction; it can involve combining or reorganizing instructions that address related points. The goal, always, is to finish with a set of instructions that clearly and accurately state the law that applies to the particular case, no more and no less.

**Plain language.** Jury instructions need to express legal concepts in plain language for lay jurors. When feasible, the committee translates complicated legal jargon into a series of simple, declarative, easy-to-understand sentences, while being careful to retain legal accuracy. For this reason, the pattern instructions do not always precisely follow the language of the governing statute or judicial opinion, as these are not written with the lay juror in mind. See *Bell v. State*, 147 Wn.2d 166, 177, 52 P.3d 503 (2002) (an instruction that uses statutory language is “appropriate only if the statute is applicable, reasonably clear, and not misleading”); *Barrett v. Lucky Seven Saloon, Inc.*, 152 Wn.2d 259, 267, 96 P.3d 386 (2004) (quoting *Bell*); *Turner v. City of Tacoma*, 72 Wn.2d 1029, 1034, 435 P.2d 927 (1967) (“That [a court] may have used certain language in an opinion does not mean that it can be properly incorporated into a jury instruction.”); *Swope v. Sundgren*, 73 Wn.2d 747, 750, 440 P.2d 494 (1968) (the language used by the Supreme Court “is not ordinarily designed or intended as a model for jury instructions”).

The committee urges trial judges and attorneys to use plain language when preparing jury instructions. For a good discussion of plain-language drafting principles, see Professor Peter Tiersma’s article, *Communicating with Jurors: How to Draft More Understandable Jury Instructions*, National Center for State Courts, Williamsburg, VA, 2006 (also available online from the website for the National Center for State Courts at <http://nosc.contentdm.oclc.org/cdm/singleitem/collection/juries/id/263/rec/1>). Many other resources are also available.

**Evolution of pattern instructions—earlier versions not necessarily erroneous.** The committee regularly updates the pattern instructions. Changes to an instruction do not necessarily mean that earlier versions of the instruction were erroneous. Sometimes the committee updates an instruction to incorporate a change in law; more often, updated language merely reflects an intent to improve the wording of what was already an accurate statement of the law.

This latter point has been succinctly stated by the Court of Appeals: “Clarification of [a pattern jury] instruction does not amount to an indictment of earlier versions.” *State v. Holzknecht*, 157 Wn.App. 754, 238 P.3d 1233, 1239 (2010). The *Holzknecht* court expressly disagreed with a contrary analysis from *State v. Hayward*, 152 Wn.47p. 632, 217 P.3d 354 (2009). In *Hayward*, another division of the Court of Appeals had ~~revised it to more closely follow statutory language~~ ~~in part that another pattern instruction was erroneous because the committee had later revised it to more closely follow statutory language~~. *State v. Hayward*, 152 Wn.2d at 644–46 (“The revision to WPLIC 10.03 shows what the previous version of WPLIC 10.03 did not adequately follow [the governing statute]”). *Hayward* thus ~~could be interpreted as holding that a change in instructional language is presumptive evidence of earlier error~~. ~~The committee hopes that Hayward will not be interpreted in this manner, and that courts will consider whether an instructional language change is mere clarification, as in Holzknecht.~~

To assist in this regard, the committee will strive to explain instructional changes in the accompanying Comments. For example, when an instruction has undergone extensive revision for purposes of plain language improvements, the committee intends to indicate that the changes were made to improve juror understanding rather than to substantively change the statement of the applicable law. The absence of such a statement, however, should not be interpreted as implying a contrary intent.

**Bracketed language.** Many of the pattern instructions include bracketed language. The brackets signify that the enclosed language may or may not be appropriate for a particular case.

Often, bracketed language appears in pairs, with a choice being presented as to which of the bracketed alternatives applies to the particular case. Sometimes a pattern instruction includes a series of bracketed terms, and one or more of the terms could be applicable. The judge and attorneys should carefully consider which terms should be included. Inclusion of terms that do not apply to the facts of a case could confuse the jury or inadvertently insert unintended issues into the case.

In any event, the brackets are not meant to be included in the final jury instructions; they are inserted to alert the judge and attorneys that a choice in language needs to be made.

**Blank lines.** Pattern instructions occasionally include blank lines. Most of the blank lines are intended to be filled in by the judge, so that the final jury instruction would use the judge’s inserted language instead of the blank line. These blank lines are designated with parenthetical information that appears above the blank line, as in: “(describe conduct or activity).” Practitioners should make sure that the inserted information does not amount to a judicial comment on the evidence.

Other blank lines are intended to be left in the final jury instructions, to be filled in by the jury. These blank lines are usually designated with parenthetical information that appears below or next to the blank line, as in: “ANSWER: \_\_\_\_\_ (Write “yes” or “no”).” The context should make clear which blank lines are to be filled in by the jury and which by the judge.

**Effective dates.** A notation appears at the end of each Comment indicating the instruction’s “current as of” date. These dates remind users as to the need to research any changes in law that may have occurred since the date when the

committee last considered the instruction.

**State and local rules.** State and local rules address instruction-related issues, such as the number of copies of proposed instructions the attorney must submit, particular formatting requirements, and the like. State rules are cited throughout the chapters and appendices. Local rules, however, are beyond the scope of the Comments and appendices for these volumes. Attorneys should carefully consider local rules when preparing their proposed instructions.

**Feedback requested.** The committee is always interested in receiving feedback as to these instructions. Suggestions for improvements may be sent to the committee at [JuryInstructions@courts.wa.gov](mailto:JuryInstructions@courts.wa.gov).

*[Effective as of December 2015.]*

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*WPIC35.12Assault—Second Degree (Alternate Means)—Inflict Substantial Bodily Harm Or With Deadly...*

Washington Practice Series TM  
Washington Pattern Jury Instructions--Criminal  
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Washington Practice Series TM  
Washington Pattern Jury Instructions--Criminal  
October 2016 Update

Washington State Supreme Court Committee on Jury Instructions

Part VI. Crimes Against Personal Security  
WPIC CHAPTER 35. Assault and Reckless Endangerment

**WPIC 35.12 Assault—Second Degree (Alternate Means)—Inflict Substantial Bodily Harm Or With  
Deadly Weapon—Elements**

To convict the defendant of the crime of assault in the second degree, each of the following two elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about(date), the defendant:
  - [(a) intentionally assaulted(name of person)and therey recklessly inflicted substantial bodily harm;] [or]
  - [(b) assaulted(name of person)with a deadly weapon;] and
- (2) That this act occurred in the State of Washington.

*Robinson August 22, 2017  
cited in WPIC 35.12  
16-30096 archived on*

If you find from the evidence that element (2) and either alternative element (1)(a) or (1)(b) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (1)(a) or (1)(b) has been proved beyond a reasonable doubt, as long as each juror finds that either (1)(a) or (1)(b) has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to either element (1) or (2), then it will be your duty to return a verdict of not guilty.

**NOTE ON USE**

The instruction is drafted for cases in which the jury needs to be instructed using two or more of the alternatives for element (1). Care must be taken to limit the alternatives to those that were included in the charging document and are supported by sufficient evidence. For directions on when and how to draft instructions with alternative elements, see the Introduction to WPIC 4.20 and the Note on Use and Comment to WPIC 4.23 (Elements of the Crime—Alternative Elements—Alternative Means for Committing a Single Offense—Form). For the related special verdict form, see WPIC 190.09 (Special Verdict Form—Elements with Alternatives). For any case in which substantial evidence supports only one of the alternatives in element (1), revise the instruction to remove references to alternative elements, following the format set forth in WPIC 4.21 (Elements of the Crime—Form).

Along with this instruction, use WPIC 10.01 (Intent—Intentionally—Definition), WPIC 10.03 (Recklessness—Definition), WPIC 2.03.01 (Substantial Bodily Harm—Defined), WPIC 35.50 (Assault—Definition), and WPIC 2.06 (Deadly Weapon—Definition) or WPIC 2.06.01 (Deadly Weapon—Firearm—Definition).

For a discussion of the phrase “this act” in the jurisdictional element, see the Introduction to WPIC 4.20 and the Note on Use to WPIC 4.21 (Elements of the Crime—Form).

**COMMENT**

RCW 9A.36.021(1)(a) and (c).

See the Comment to WPLIC 35.11 (Assault—Second Degree—With Intent to Commit Felony—Elements) for a general discussion of second degree assault.

For discussion of offenses involving alternative means, see the Introduction to WPLIC 4.20 and the Note on Use and Comment to WPLIC 4.23 (Elements of the Crime—Alternative Elements—Alternative Means for Committing a Single Offense—Form).

For a discussion of the importance of tailoring the definition of recklessness to the terms of the charged crime, see the Comment to WPLIC 10.03. The Supreme Court, in *State v. Johnson*, 180 Wn.2d 295, 325 P.3d 135 (2014), concluded that so long as all elements are included in the “to convict,” a specially-tailored definition of recklessness is not required. Because this area of the law is in flux, careful consideration of use of a tailored definition of recklessness should be given. [*Current as of December 2015*]

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