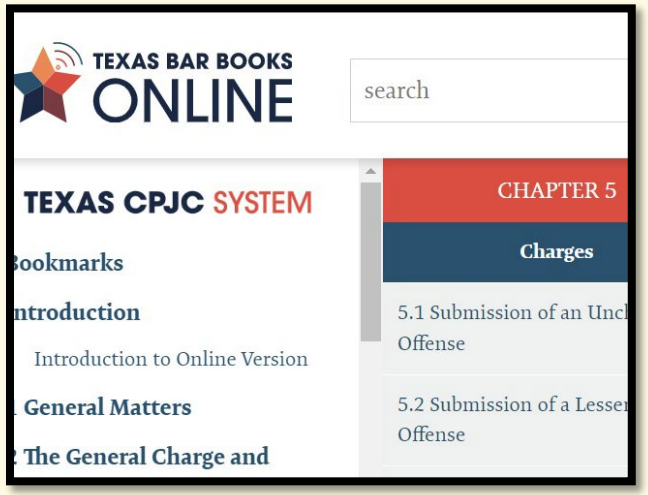
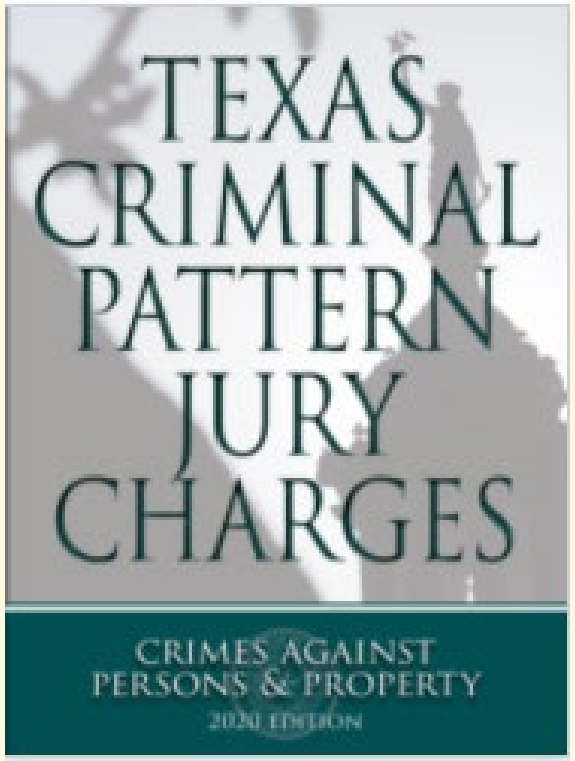
JUMP ONLINE

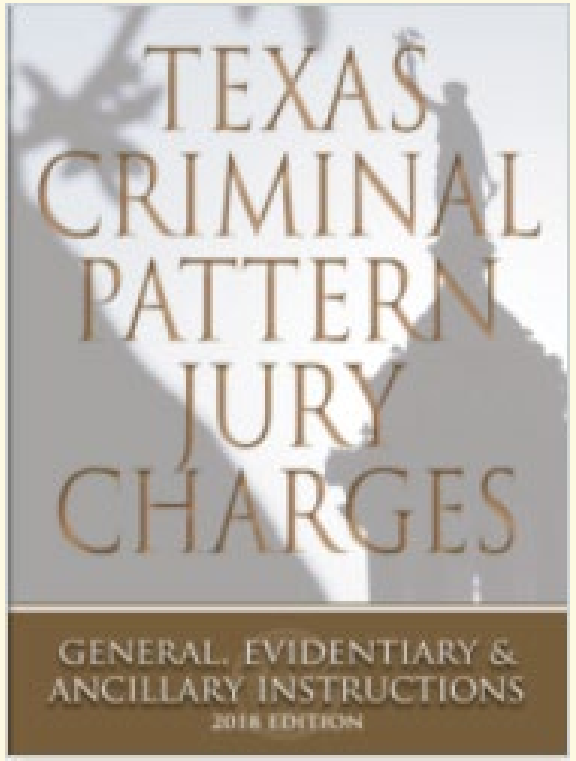


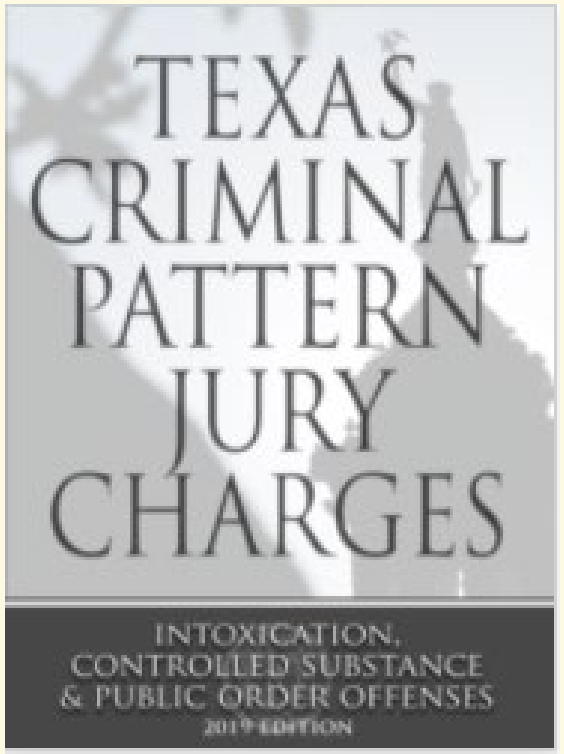
with the Criminal Pattern Jury Charges

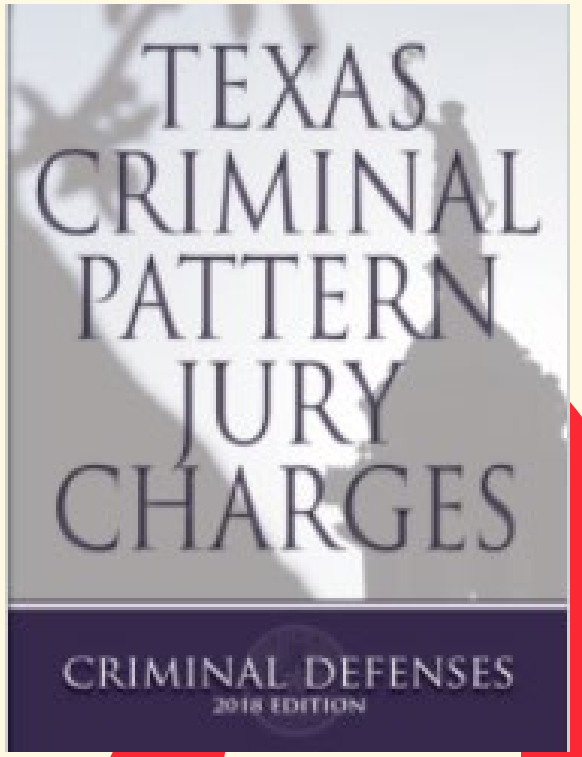
Emily Johnson-Liu pjccrims@gmail.com

Why Use the Pattern Charges?









Avoid Reversible Error 1

Thoroughly Vetted 2

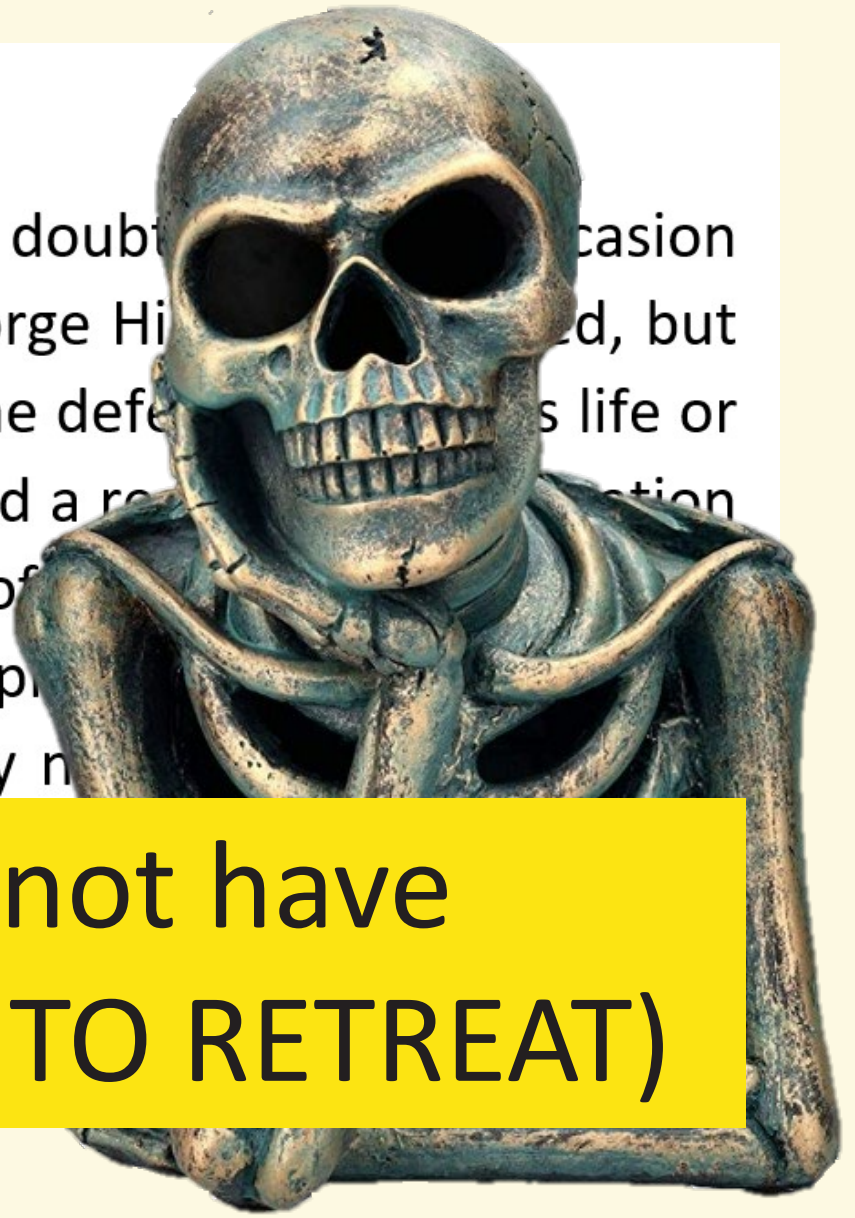
Newly Streamlined 3

Now Online 4

I found the charge from the *Jones* case. Let's use it! Reduce, Reuse, Recycle, right?
PAPER

Self-Defense

Now if you find from the evidence beyond a reasonable doubt[illegible]casion in question the defendant, Carlos Lozano, did shoot Jorge Hi[illegible]d, but you further find that, viewed from the standpoint of the defe[illegible]s life or person was in danger and there was created in his mind a re[illegible]tion or fear of death or serious bodily injury from the use of[illegible] Jorge Hinojos, if any, and that acting under such appr[illegible] believed that his use of deadly force was immediately n[illegible]



a reasonable person…would not have retreated (OUTDATED DUTY TO RETREAT)

Lozano, 636 SW3d 25

State Bar Committee: Creating Solid Charges

Experienced Member-Contributors

Defense

Wendell Odom, Jr.

Prosecution

Alan Curry

Judiciary

Hon. Robert Cadena

Academia

Prof. Jennifer Laurin

20+ Additional Volunteers

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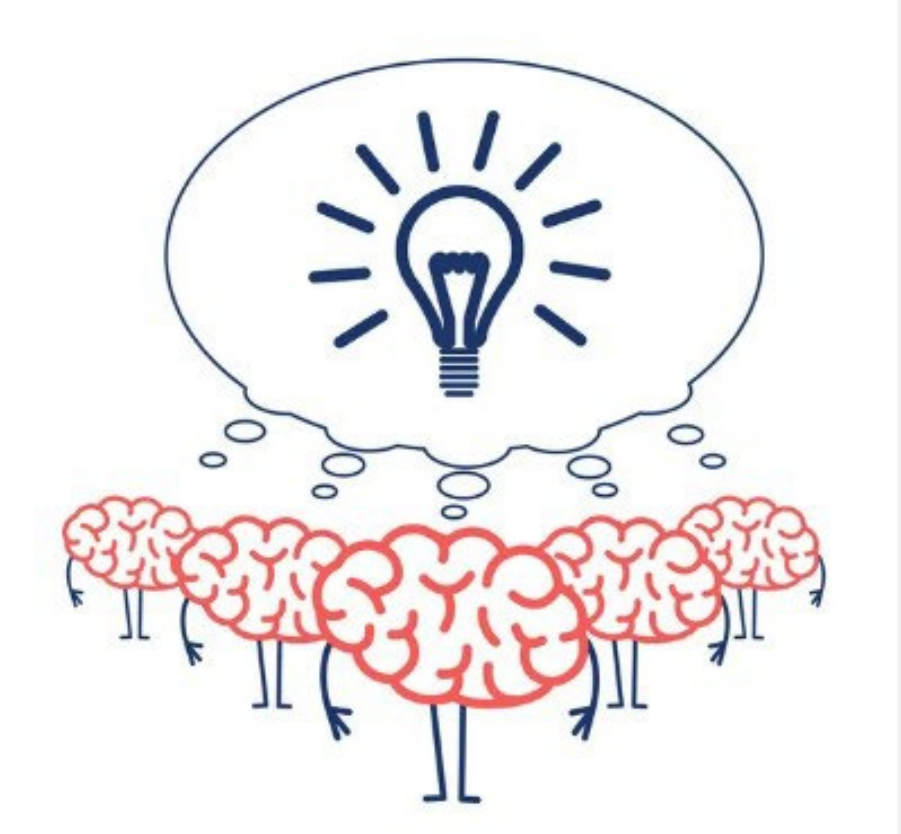
Jorge Aristotelidis
Hon. Alan Bennett
Hon. Robert E. Cadena
Kenda Culpepper
Alan Curry
Chris Downey
Cheri Lynn Duncan
Laurie English
Andrew Fletcher
Hon. Melissa Goodwin
Hon. Sid Harle
Marissa Hatchett
Emily Johnson-Liu



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John Messinger
Scott Pawgan
Elizabeth (McClain) Ponce
Thomas Ross
Tiana Sanford
Eve Schatelowitz
Hon. Ben Smith
Alexandra Vargas
Zack Wavrusa
Jay Wooten

Committee Members

- Appointed by State Bar President
- Meet 6 times a year
- Adopt-a-Charge

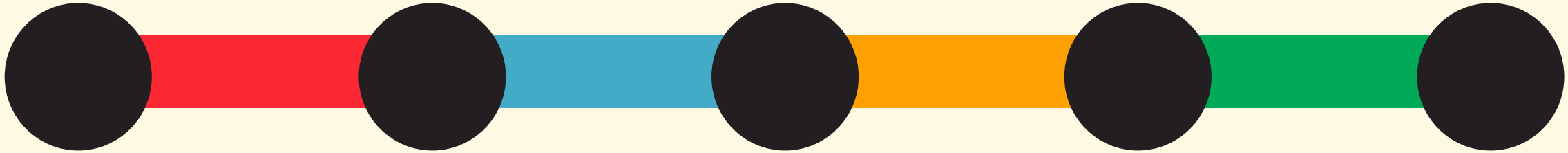
Potential New Members Can Submit Interest Form (due 12/1 each year)

Review by Oversight Committee

- Business, Consumer, Insurance & Employment
- **Criminal**
- Family & Probate
- General Negligence, Intentional Torts & Worker's Compensation
- Malpractice, Premises & Products
- Oil & Gas

Public Comment— TEXAS BAR PRACTICE Blog

What's So Great About these Charges?



Numbered Lists of Elements

Clearer Culpable Mental States

Specific Unanimity Instructions

Plain Language

Commentary

Other Versions

vs.

Ours

Application Paragraphs

NOW if you unanimously find from the evidence beyond a reasonable doubt that on or about the ____day of ____ 20___, in ____ County, Texas, the defendant **DEFENDANT**, did then and there intentionally or knowingly cause the penetration of the female sexual organ of VICTIM by his sexual organ, without the consent of VICTIM, and in the course of the same criminal episode the defendant caused serious bodily injury to or attempted to cause the death of VICTIM by impeding the breath of VICTIM with Defendant's hands or arms; did then and there by acts or words threaten to cause or place VICTIM in fear that death or serious bodily injury would be imminently inflicted on VICTIM; OR in the course of the same criminal episode the defendant used or exhibited a deadly weapon, to wit: defendant's hands or arms, **OR** if you unanimously find from the evidence beyond a reasonable doubt that on or about the ____ day of _____ 20___, in _____ County, Texas, the defendant **DEFENDANT**, did then and there intentionally or knowingly cause the penetration of the female sexual organ of VICTIM by an object unknown to the Grand Jurors, without the consent of VICTIM, and in the course of the same criminal episode the defendant caused serious bodily injury to or attempted to cause the death of VICTIM by impeding the breath of VICTIM with Defendant's hands or arms; did then and there by acts or words threaten to cause or place VICTIM in fear that death or serious bodily injury would be imminently inflicted on VICTIM; OR in the course of the same criminal episode the defendant used or exhibited a deadly weapon, to wit: defendant's hands or arms, **OR** if you unanimously find from the evidence beyond a reasonable doubt that on or about the ____ day of ____ 20__, in ____ County, Texas, the defendant **DEFENDANT**, did then and there intentionally or knowingly cause the penetration of the female sexual organ of Janet Vera by defendant's fingers, without the consent of VICTIM, and in the course of the same criminal episode the defendant caused serious bodily injury to or attempted to cause the death of VICTIM by impeding the breath of VICTIM with Defendant's hands or arms; did then and there by acts or words threaten to cause or place VICTIM in fear that death or serious bodily injury would be imminently inflicted on VICTIM; OR in the course of the same criminal episode the defendant used or exhibited a deadly weapon, to wit: defendant's hands or arms, then you will find the Defendant guilty, as charged in the indictment.

Theirs

You must determine whether the state has proved, beyond a reasonable doubt, three elements. The elements are that--

1. the defendant, in *[county]* County, Texas, on or about *[date],* intentionally or knowingly caused the penetration of the sexual organ of *[name]* by

    a. placing his sexual organ in the female sexual organ of *[name]];* or

    b. placing an object unknown to the grand jury in the female sexual organ of *[name];* or

    c. placing his finger in the female sexual organ of *[name];* and

2. this penetration was without the consent of *[name]*; and

3. the defendant

    a. during the same criminal episode, caused serious bodily injury to [*name*] or attempted to cause the death of [*name*] by impeding the breath of [*name*] with the defendant's hands or arms; or

    b. by acts or words placed [*name*] in fear that death or serious bodily injury would be imminently inflicted on [*name*]; or

    c. by words or acts occurring in the presence of [*name*], threatened to cause the death or serious bodily injury to [*name*]; or

    d. used or exhibited a deadly weapon, to wit: defendant's hands or arms, in the course of the same criminal episode.

You must all agree on elements 1, 2, and 3 listed above, but you do not have to all agree on the manner of penetration in element 1.a through 1.c listed above or the aggravating factor in elements 3.a through 3.d.

Ours

Mental State Definitions

Campbell

Murder: Result Oriented

A person acts intentionally
with respect ~~to the nature of his conduct~~
~~or~~
to a result of his conduct
when it is his conscious objective
or desire to ~~engage in the conduct~~
~~or~~
cause the result

Mental State Definitions

Intent

A person acts intentionally or with intent with respect to a result of his conduct when it is his conscious objective or desire to cause the result.

Theirs

"Intentionally Causing the Death of an Individual"

A person intentionally causes the death of an individual if the person has the conscious objective or desire to cause that death.

Always Applied to the Element

Ours

The Commentary

Commentary

Issue Spotting

Key Cases

Practice Pointers

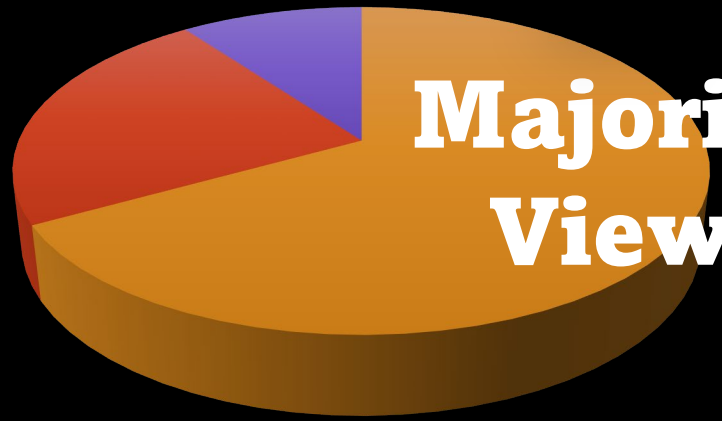
Election and Incident Unanimity. When the state charges the defendant fense but the evidence at trial includes multiple instances when the defendant comm e state is required at the close of its evidence to elect which instance or incident th iction, as long as the defense requests such an electio . *Phillips v. State*, 193 S.W.3d 904, 90 9 (Tex. Crim. App. 2006). One of the reasons behind this requirement for election is that it is a way "to ensure unanimous verdicts; that is, all of the jurors agreeing that one specific incident, which constituted the offense charged in the indictment, occurred." *Phillips*, 193 S.W.3d at 910. If the defense does not request an election, all of the incidents offered at trial will be double-jeopardy barred. *Dixon v. State*, 201 S.W.3d 731

If the defense requests the state to elect, the trial court should require such an election when the state rests its case-in-chief. *Phillips*, 193 S.W.3d at 909–10. The Committee's recommended language for such an instruction in the jury charge is included in several instructions in this chapter under the heading "State's Election of a Particular Incident."

Commentary— “It’s Like Having Others Help You Argue in the Charge Conference”

CCP art. 38.37, § 2

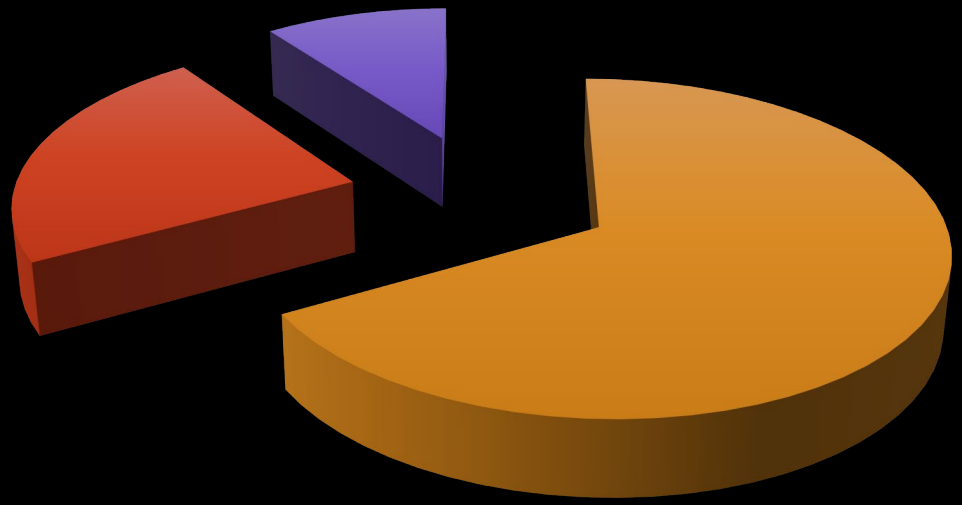
victim



Jury Charge

- May consider evidence for any bearing it has on relevant matters
- This includes the character of the defendant and acts performed in conformity with that character.

- The defendant is not on trial for any offenses not alleged in the indictment.



MINORITY REPORT

Given the lack of controlling Texas law on point, the Committee was deeply divided on how best to instruct jurors regarding article 38.37, section 2, evidence. The Committee, for instance, considered whether —as part of a larger instruction on this kind of evidence—to include

You may not convict the defendant solely because you believe he may have committed separate offenses at some other time.

beyond the language of the statute. Still others were concerned that, even if it proved helpful in some instances, a boilerplate jury instruction might give false assurance that jurors were using the evidence only for permissible purposes.

The instruction that the majority of the Committee ultimately decided on is included in several instructions in this chapter under the heading

2021-22: Streamlining the Charge

Streamlining the Pattern

- Accusation (~~indictment elements~~)
- Abstract Definition of Offense (elements in paragraph form)
  (~~elements in abstract numbered list~~)
- Application Paragraph (numbered list applied to the facts)
- ~~Additional Burden of Proof Section~~

LAW SPECIFIC TO THIS CASE

~~Accusation~~

The state accuses the defendant of having committed the offense of [*offense*]. ~~Specifically, the accusatio~~ ~~s, e.g., intentionally, knowingly, ~~ ~~hooting him with a gun, and thereby caused serious bodily injury to [*name*]].~~

Indictment language

Relevant Statutes *[tailored to remove statutory alternatives not supported by the accusation & proof]*

A person commits ~~an~~ the offense of [*offense*] if the person intentionally, knowingly, or recklessly causes bodily injury to another and thereby causes that person serious bodily injury.

~~To prove that the defendant is guilty of aggravated assault, the state must prove, beyond a reasonable doubt, two elements. The elements are that—~~

~~1. the defendant cau~~ ~~nd~~

~~2. the defendant did~~

~~[include applicable mer~~ ~~he evidence]~~

Numbered list in abstract

~~a. intending to ca~~

~~b. knowing that he would cause bodily injury to that person; or~~

~~c. with recklessness about whether he would cause bodily injury to that person.~~

~~Burden of Proof~~

~~The state must ~~ ~~ed assault.~~

Additional Burden of Proof

Definitions

Intentionally Causing Bodily Injury

A person intentionally causes bodily injury to another if it is the person's conscious objective or desire to cause the bodily injury to another.

Knowingly Causing Bodily Injury

A person knowingly causes bodily injury to another if the person is aware that the person's conduct is reasonably certain to cause the bodily injury to another.

Recklessly Causing Bodily Injury

A person recklessly causes bodily injury to another if the person is aware of but consciously disregards a substantial and unjustifiable risk that the person's action will cause bodily injury to another. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Application of Law to Facts

You must determine whether the state has proved, beyond a reasonable doubt, two elements. The elements are that—

1. the defendant, in [*county*] County, Texas, on or about [*date*], caused serious bodily injury to [*name*] by [*insert specific allegations, e.g.*, shooting [*name*] with a gun]; and
2. the defendant did this—
   a. intending to cause bodily injury to [*name*]; or
   b. knowing that he would cause bodily injury to [*name*]; or
   c. with recklessness about whether he would cause bodily injury to [*name*].

You must all agree on elements 1 and 2 listed above, but you do not have to agree on the culpable mental states listed in elements 2.a, 2.b, and 2.c above.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or both of elements 1 and 2 listed above, you must find the defendant "not guilty."

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- Plain Language for Jurors
- Streamlined Charges
- Vetted Charges--no vestiges
- Commentary to Help You Spot Issues

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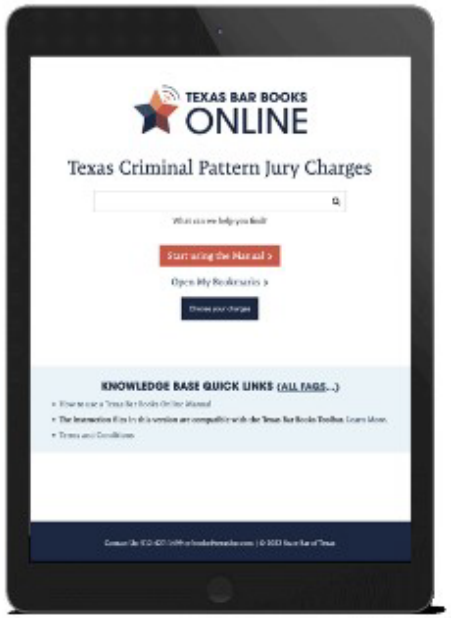

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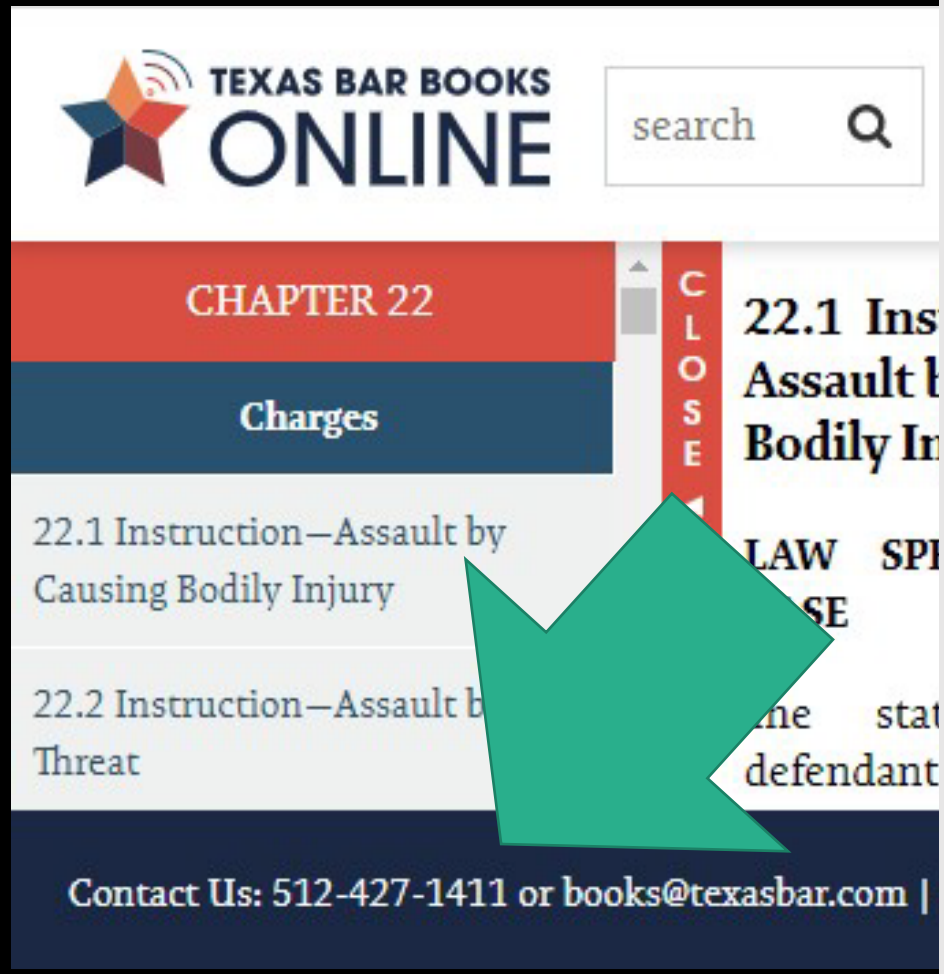

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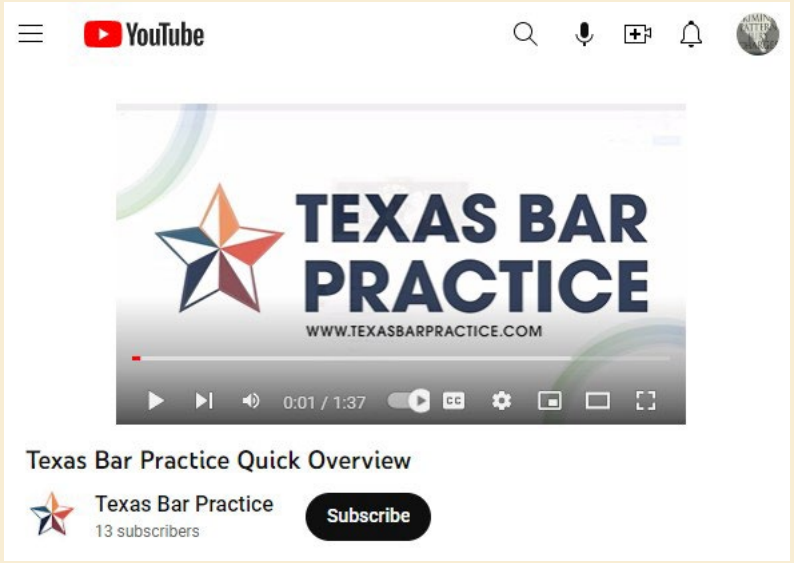

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