

2016

**TEXAS
CRIMINAL
PATTERN
JURY
CHARGES**

**Crimes against Persons
& Property**

CPJC 84.17 Instruction—Aggravated Sexual Assault of Adult**INSTRUCTIONS OF THE COURT****Accusation**

The state accuses the defendant of having committed the offense of aggravated sexual assault. Specifically, the accusation is that the defendant [*insert specific allegations, e.g., intentionally or knowingly caused the penetration of the female sexual organ of [name] by placing his sexual organ in the female sexual organ of [name] without the consent of [name], in that the defendant compelled [name] to submit or participate by the use of physical force or violence*] and [*insert specific aggravating factor, e.g., in the same criminal episode caused serious bodily injury to [name]*].

Relevant Statutes

A person commits an offense if the person intentionally or knowingly causes the penetration of the sexual organ of another person by any means without that other person's consent and [*insert specific aggravating factor, e.g., causes serious bodily injury to another person in the same criminal episode*].

Penetration of another person's sexual organ is without consent if the person compels the other person to submit or participate by the use of physical force or violence.

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

1. the defendant intentionally or knowingly caused the penetration of the sexual organ of another person by any means; and
2. this penetration was without the consent of that other person because the defendant used physical force or violence, and by this physical force or violence the defendant forced the other person to submit or participate; and

[Select one or more of the following.]

3. the defendant caused serious bodily injury to [the victim/another person] during the same criminal episode.

[or]

3. the defendant attempted to cause the death of [the victim/another person] during the same criminal episode.

[or]

3. the defendant by acts or words placed the victim in fear that death, serious bodily injury, or kidnapping would be imminently inflicted on any person.

[or]

3. the defendant, by words or acts occurring in the presence of the victim, threatened to cause the death, serious bodily injury, or kidnapping of any person.

[or]

3. the defendant used or exhibited a deadly weapon in the course of the same criminal episode.

[or]

3. the defendant acted in concert with another person who, during the course of the same criminal episode, committed sexual assault of the same victim.

[or]

3. the defendant administered or provided flunitrazepam to the victim of the offense with the intent of facilitating the commission of the offense.

[or]

3. the other person was an elderly individual or disabled individual.

Burden of Proof

The state must prove, beyond a reasonable doubt, the accusation of aggravated sexual assault.

Definitions*Intentionally Causing Penetration*

A person intentionally causes the penetration of the sexual organ of another person by his sexual organ if the person has the conscious objective or desire to cause that penetration.

Knowingly Causing Penetration

A person knowingly causes the penetration of the sexual organ of another person by his sexual organ if the person is aware that his conduct is reasonably certain to cause that penetration.

Bodily Injury

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

Serious Bodily Injury

“Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

[Select one of the following.]

On or about

The indictment alleges that the offense was committed on or about [*date*]. The state is not required to prove that the alleged offense happened on that exact date. It is sufficient if the state proves that the offense was committed before [*date of indictment*], the date the indictment was filed. But the offense cannot be so far back in time that it is outside the statute of limitations period—a particular amount of time required for a case to be indicted or prosecution will be barred. The statute of limitations for aggravated sexual assault is ten years.

*[or, if no limitations period under Texas Code of Criminal
Procedure article 12.01(1)(C)]*

On or about

The indictment alleges that the offense was committed on or about [date]. The state is not required to prove that the alleged offense happened on that exact date. It is sufficient if the state proves that the offense was committed before [date of indictment], the date the indictment was filed.

[Include if raised by the evidence and requested by the defense.]

State's Election of a Particular Incident

The state has offered evidence of more than one incident to prove aggravated sexual assault as alleged in the indictment. The state is required to choose one of those incidents for you to consider in deciding whether it has met its burden of proof on that particular occasion. The incident that the state has chosen is [insert specific incident, e.g., the first act of sexual intercourse that [name] testified that she remembered]. This is the only incident for which the defendant is on trial [in this case/in count [number]]. You are to confine your deliberations to deciding whether the defendant is guilty or not guilty of aggravated sexual assault on that particular occasion. You cannot find the defendant guilty of aggravated sexual assault based on an occurrence at any other time or place other than the incident that the state has chosen.

Also, you may not consider evidence of any other incident for any purpose unless you find, beyond a reasonable doubt, that such incident occurred. Even then, you may consider it only for the specific, limited purpose of determining [insert limited purpose, e.g., the defendant's intent].

Application of Law to Facts

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 [insert specific allegations, e.g., placing his sexual organ in the female sexual organ of [name]]; and

2. this penetration was without the consent of [name] because the defendant used physical force or violence, and by that physical force or violence compelled [name] to submit or participate; and

3. *[insert appropriate third element from Texas Penal Code section 22.021(a)(2), e.g., the defendant caused serious bodily injury to [name] during the course of the same criminal episode].*

[Select one of the following. Choose the second option if incident unanimity has been raised by the evidence and there has been no request for election.]

You must all agree on elements 1, 2, and 3 listed above.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of elements 1, 2, and 3 listed above, you must find the defendant “not guilty.”

If you all agree the state has proved, beyond a reasonable doubt, each of the three elements listed above, you must find the defendant “guilty.”

[or]

The state has presented evidence of more than one incident to prove aggravated sexual assault as alleged [in the indictment/in count *[number]*]. To reach a guilty verdict [in this case/in count *[number]*], you must all agree that the state has proved elements 1, 2, and 3 listed above, and you must also all agree that these elements occurred in the same incident. While it is permissible for you all to agree on more than one incident, to reach a guilty verdict in the case, you must all agree that these elements occurred in the same incident or incidents.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of elements 1, 2, and 3 listed above, you must find the defendant “not guilty.”

If you all agree the state has proved, beyond a reasonable doubt, the three elements listed above, and you all agree on the same incident or incidents when these elements occurred, you must find the defendant “guilty.”

[Insert any other instructions raised by the evidence. Then continue with the verdict form found in CPJC 2.1, the general charge, in Texas Criminal Pattern Jury Charges—General, Evidentiary & Ancillary Instructions.]

COMMENT

Aggravated sexual assault is prohibited by and defined in Tex. Penal Code § 22.021. The definitions of culpable mental states are derived from Tex. Penal Code

§ 6.03. The definition of ‘bodily injury’ is from Tex. Penal Code § 1.07(a)(8). The definition of “serious bodily injury” is from Tex. Penal Code § 1.07(a)(46).

Culpable Mental State Regarding “Aggravating” Element. The above instruction does not require a culpable mental state regarding the additional element elevating sexual assault under Texas Penal Code section 22.011 to aggravated sexual assault under section 22.021. None is explicitly required by section 22.021.

In addition, one of the alternative aggravating elements does contain an explicit requirement of a culpable mental state. Tex. Penal Code § 22.021(a)(2)(A)(vi) (requiring administration of flunitrazepam to have been “with the intent of facilitating the commission of the offense”). This persuaded the Committee that the legislature intended culpable mental states regarding aggravating elements only where it explicitly provided them.

Definition of “Criminal Episode.” The instruction contains no definition of the term *criminal episode*.

In *Burns v. State*, 728 S.W.2d 114 (Tex. App.—Houston [14th Dist.] 1987, pet. ref’d), the court of appeals held that the definition of criminal episode in chapter 3 of the Penal Code did not apply to aggravated sexual assault. Rejecting what apparently was a contention that the lack of a definition made the offense unenforceable, the court explained:

We hold that for purposes of Section 22.011 and 22.021, the ‘criminal episode’ commences when the attacker in any way restricts the victim’s freedom of movement and it ends with the final release or escape of the victim from the attacker’s control. We further hold that the use or exhibition of a weapon *at any time* during this period will elevate the crime to an aggravated status.

Burns, 728 S.W.2d at 116.

Burns did not consider the jury charge. The Eastland court of appeals, however, has held that a trial judge did not err in refusing to instruct the jury on *Burns*’s definition of criminal episode. *Dodgen v. State*, 924 S.W.2d 216 (Tex. App.—Eastland 1996, pet. ref’d).

CPJC 84.18 Instruction—Aggravated Sexual Assault of Child between Fourteen and Seventeen

INSTRUCTIONS OF THE COURT

Accusation

The state accuses the defendant of having committed the offense of aggravated sexual assault of a child. Specifically, the accusation is that the defendant [*insert specific allegations, e.g., intentionally or knowingly caused the penetration of the female sexual organ of [name] by placing his sexual organ in the female sexual organ of [name], a child then under seventeen years of age, and [insert specific aggravating factor, e.g., in the same criminal episode caused serious bodily injury to [name]].*].

Relevant Statutes

A person commits an offense if the person intentionally or knowingly causes the penetration of the sexual organ of a child younger than seventeen years of age and [*insert specific aggravating factor, e.g., causes serious bodily injury in the course of the same criminal episode.*].

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

1. the defendant intentionally or knowingly caused the penetration of the sexual organ of another person by any means; and
2. the other person was at the time a child younger than seventeen years of age; and

[Select one or more of the following.]

3. the defendant caused serious bodily injury to [the victim/another person] during the same criminal episode.

[or]

3. the defendant attempted to cause the death of [the victim/another person] during the same criminal episode.

[or]

3. the defendant by acts or words placed the victim in fear that death, serious bodily injury, or kidnapping would be imminently inflicted on any person.

[or]

3. the defendant, by words or acts occurring in the presence of the victim, threatened to cause the death, serious bodily injury, or kidnapping of any person.

[or]

3. the defendant used or exhibited a deadly weapon in the course of the same criminal episode.

[or]

3. the defendant acted in concert with another person who, during the course of the same criminal episode, committed sexual assault of the same victim.

[or]

3. the defendant administered or provided flunitrazepam to the victim of the offense with the intent of facilitating the commission of the offense.

Burden of Proof

The state must prove, beyond a reasonable doubt, the accusation of aggravated sexual assault of a child.

Definitions

Intentionally Causing Penetration

A person intentionally causes the penetration of the sexual organ of another person by his sexual organ if the person has the conscious objective or desire to cause that penetration.

Knowingly Causing Penetration

A person knowingly causes the penetration of the sexual organ of another person by his sexual organ if the person is aware that his conduct is reasonably certain to cause that penetration.

Bodily Injury

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

Serious Bodily Injury

“Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

[Select one of the following.]

On or about

The indictment alleges that the offense was committed on or about *[date]*. The state is not required to prove that the alleged offense happened on that exact date. It is sufficient if the state proves that the offense was committed before *[date of indictment]*, the date the indictment was filed.

[or, if raised by the evidence]

On or about

The indictment alleges that the offense was committed on or about *[date]*. The state is not required to prove that the alleged offense happened on that exact date. It is sufficient if the state proves that the offense was committed after *[date of defendant's seventeenth birthday]*, the date of the defendant's seventeenth birthday, and before *[date of indictment]*, the date the indictment was filed.

[Include if raised by the evidence and requested by the defense.]

Evidence of Wrongful Acts Defendant Possibly Committed

During the trial, you heard evidence that the defendant may have committed wrongful acts against *[name]* not charged in the indictment. *[If requested, include description of specific acts.]* The state offered the evidence to show the state of mind of the defendant and the child *[and/or]* the previous and subsequent relationship between the defendant and the child. You are not to consider that evidence at all unless you find, beyond a reasonable doubt, that the defendant did, in fact, commit the wrongful act against *[name]*. Those of you who believe the defendant did the wrongful act may consider it.

Even if you do find that the defendant committed a wrongful act, you may consider this evidence only for the limited purpose[s] described above. You may not consider this evidence to prove that the defendant is a bad person and for this reason was likely to commit the charged offense. In other words, you should consider this evidence only for the specific, limited purpose[s] described above. To consider this evidence for any other purpose would be improper.

[Include if raised by the evidence and requested by the defense.]

Evidence of Another Offense Defendant Possibly Committed

During the trial, you heard evidence that the defendant may have committed [an offense/offenses] [against *[name of extraneous victim]*]/other than the one he is currently accused of in the indictment]. You are not to consider that evidence at all unless you find, beyond a reasonable doubt, that the defendant did, in fact, commit [the offense[s] against *[name of extraneous victim]*]/the other offense[s]]. Those of you who believe the defendant committed [that offense/those offenses] may consider it.

You may consider this evidence for any bearing this evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant. Even if you consider it, however, the defendant is not on trial for any offenses not alleged in the indictment. You must determine if the state proved all the elements for the offense alleged in the indictment.

[Include if raised by the evidence and requested by the defense.]

State's Election of a Particular Incident

The state has offered evidence of more than one incident to prove aggravated sexual assault of a child as alleged in the indictment. The state is required to choose one of those incidents for you to consider in deciding whether it has met its burden of proof on that particular occasion. The incident that the state has chosen is [*insert specific incident, e.g., the first act of sexual intercourse that [name] testified that she remembered*]. This is the only incident for which the defendant is on trial [in this case/in count *[number]*]. You are to confine your deliberations to deciding whether the defendant is guilty or not guilty of aggravated sexual assault of a child on that particular occasion. You cannot find the defendant guilty of aggravated sexual assault of a child based on an occurrence at any other time or place other than the incident that the state has chosen.

Also, you may not consider evidence of any other incident for any purpose unless you find, beyond a reasonable doubt, that such incident occurred. Even then, you may consider it only for the specific, limited purpose of determining [*insert limited purpose, e.g., the defendant's intent*].

Application of Law to Facts

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 [*insert specific allegations, e.g., placing his sexual organ in the female sexual organ of [name]*]; and
2. [*name*] was at the time a child younger than seventeen years of age; and
3. [*insert appropriate third element from Texas Penal Code section 22.021(a)(2), e.g., the defendant caused serious bodily injury to [name] during the course of the same criminal episode*].

[Select one of the following. Choose the second option if incident unanimity has been raised by the evidence and there has been no request for election.]

You must all agree on elements 1, 2, and 3 listed above.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of elements 1, 2, and 3 listed above, you must find the defendant “not guilty.”

If you all agree the state has proved, beyond a reasonable doubt, each of the three elements listed above, you must [find the defendant “guilty”/proceed to consider whether the defense of medical care applies].

[or]

The state has presented evidence of more than one incident to prove aggravated sexual assault of a child as alleged [in the indictment/in count [*number*]]. To reach a guilty verdict [in this case/in count [*number*]], you must all agree that the state has proved elements 1, 2, and 3 listed above, and you must also all agree that these elements occurred in the same incident. While it is permissible for you all to agree on more than one incident, to reach a guilty verdict in the

case, you must all agree that these elements occurred in the same incident or incidents.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of elements 1, 2, and 3 listed above, you must find the defendant “not guilty.”

If you all agree the state has proved, beyond a reasonable doubt, the three elements listed above, and you all agree on the same incident or incidents when these elements occurred, you must [find the defendant “guilty”/proceed to consider whether the defense of medical care applies].

[Insert defense if raised by the evidence; see CPJC 84.21. Insert any other instructions raised by the evidence. Then continue with the verdict form found in CPJC 2.1, the general charge, in Texas Criminal Pattern Jury Charges—General, Evidentiary & Ancillary Instructions.]

COMMENT

Aggravated sexual assault is prohibited by and defined in Tex. Penal Code § 22.021. The definitions of culpable mental states are derived from Tex. Penal Code § 6.03. The definition of “bodily injury” is from Tex. Penal Code § 1.07(a)(8). The definition of “serious bodily injury” is from Tex. Penal Code § 1.07(a)(46).

CPJC 84.19 Instruction—Aggravated Sexual Assault of Child under Fourteen

INSTRUCTIONS OF THE COURT

Accusation

The state accuses the defendant of having committed the offense of aggravated sexual assault of a child. Specifically, the accusation is that the defendant [*insert specific allegations, e.g., intentionally or knowingly caused the penetration of the female sexual organ of [name] by placing his sexual organ in the female sexual organ of [name], a child then under fourteen years of age*] [*insert aggravating factor if alleged for twenty-five-year minimum sentence, e.g., and in the same criminal episode caused serious bodily injury to [name]*].

Relevant Statutes

A person commits an offense if the person intentionally or knowingly causes the penetration of the sexual organ of a child younger than fourteen years of age.

To prove that the defendant is guilty of aggravated sexual assault of a child, the state must prove, beyond a reasonable doubt, [two/three] elements. The elements are that—

1. the defendant intentionally or knowingly caused the penetration of the sexual organ of another person by any means; and
2. the other person was at the time a child younger than fourteen years of age [; and/.]

[Include one or more of the following from Texas Penal Code section 22.021(a)(2) if pled.]

3. the defendant caused serious bodily injury to [the victim/another person] during the same criminal episode.

[or]

3. the defendant attempted to cause the death of [the victim/another person] during the same criminal episode.

[or]

3. the defendant by acts or words placed the victim in fear that death, serious bodily injury, or kidnapping would be imminently inflicted on any person.

[or]

3. the defendant, by words or acts occurring in the presence of the victim, threatened to cause the death, serious bodily injury, or kidnapping of any person.

[or]

3. the defendant used or exhibited a deadly weapon in the course of the same criminal episode.

[or]

3. the defendant acted in concert with another person who, during the course of the same criminal episode, committed sexual assault of the same victim.

[or]

3. the defendant administered or provided flunitrazepam to the victim of the offense with the intent of facilitating the commission of the offense.

Burden of Proof

The state must prove, beyond a reasonable doubt, the accusation of aggravated sexual assault of a child.

Definitions

Intentionally Causing Penetration

A person intentionally causes the penetration of the sexual organ of another person by his sexual organ if the person has the conscious objective or desire to cause that penetration.

Knowingly Causing Penetration

A person knowingly causes the penetration of the sexual organ of another person by his sexual organ if the person is aware that his conduct is reasonably certain to cause that penetration.

Bodily Injury

“Bodily injury” means physical pain, illness, or any impairment of physical condition.

Serious Bodily Injury

“Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

[Select one of the following.]

On or about

The indictment alleges that the offense was committed on or about *[date]*. The state is not required to prove that the alleged offense happened on that exact date. It is sufficient if the state proves that the offense was committed before *[date of indictment]*, the date the indictment was filed.

[or, if raised by the evidence]

On or about

The indictment alleges that the offense was committed on or about *[date]*. The state is not required to prove that the alleged offense happened on that exact date. It is sufficient if the state proves that the offense was committed after *[date of defendant's seventeenth birthday]*, the date of the defendant's seventeenth birthday, and before *[date of indictment]*, the date the indictment was filed.

[Include if raised by the evidence and requested by the defense.]

Evidence of Wrongful Acts Defendant Possibly Committed

During the trial, you heard evidence that the defendant may have committed wrongful acts against *[name]* not charged in the indictment. *[If requested, include description of specific acts.]* The state offered the evidence to show the state of mind of the defendant and the child *[and/or]* the previous and subsequent relationship between the defendant and the child. You are not to consider that evidence at all unless you find, beyond a reasonable doubt, that the defendant did, in fact, commit the wrongful act against *[name]*. Those of you who believe the defendant did the wrongful act may consider it.

Even if you do find that the defendant committed a wrongful act, you may consider this evidence only for the limited purpose[s] described above. You may not consider this evidence to prove that the defendant is a bad person and for this reason was likely to commit the charged offense. In other words, you should consider this evidence only for the specific, limited purpose[s] described above. To consider this evidence for any other purpose would be improper.

[Include if raised by the evidence and requested by the defense.]

Evidence of Another Offense Defendant Possibly Committed

During the trial, you heard evidence that the defendant may have committed [an offense/offenses] [against *[name of extraneous victim]*]/other than the one he is currently accused of in the indictment]. You are not to consider that evidence at all unless you find, beyond a reasonable doubt, that the defendant did, in fact, commit [the offense[s] against *[name of extraneous victim]*]/the other offense[s]]. Those of you who believe the defendant committed [that offense/those offenses] may consider it.

You may consider this evidence for any bearing this evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant. Even if you consider it, however, the defendant is not on trial for any offenses not alleged in the indictment. You must determine if the state proved all the elements for the offense alleged in the indictment.

[Include if raised by the evidence and requested by the defense.]

State's Election of a Particular Incident

The state has offered evidence of more than one incident to prove aggravated sexual assault of a child as alleged in the indictment. The state is required to choose one of those incidents for you to consider in deciding whether it has met its burden of proof on that particular occasion. The incident that the state has chosen is *[insert specific incident, e.g., the first act of sexual intercourse that [name] testified that she remembered]*. This is the only incident for which the defendant is on trial [in this case/in count *[number]*]. You are to confine your deliberations to deciding whether the defendant is guilty or not guilty of aggravated sexual assault of a child on that particular occasion. You cannot find the defendant guilty of aggravated sexual assault of a child based on an occurrence at any other time or place other than the incident that the state has chosen.

Also, you may not consider evidence of any other incident for any purpose unless you find, beyond a reasonable doubt, that such incident occurred. Even then, you may consider it only for the specific, limited purpose of determining [*insert limited purpose, e.g., the defendant's intent*].

Application of Law to Facts

You must determine whether the state has proved, beyond a reasonable doubt, [two/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 [*insert specific allegations, e.g., placing his sexual organ in the female sexual organ of [name]*]; and
2. [*name*] was at the time a child younger than fourteen years of age [; and/.

[Include if pled.]

3. [*insert appropriate third element from Texas Penal Code section 22.021(a)(2), e.g., the defendant caused serious bodily injury to [name] during the course of the same criminal episode*].

[Select one of the following. Choose the second option if incident unanimity has been raised by the evidence and there has been no request for election.]

You must all agree on elements [1 and 2/1, 2, and 3] listed above.

If you all agree the state has failed to prove, beyond a reasonable doubt, [one or both of elements 1 and 2/one or more of elements 1, 2, and 3] listed above, you must find the defendant “not guilty.”

If you all agree the state has proved, beyond a reasonable doubt, [both of the two elements/each of the three elements] listed above, you must [find the defendant “guilty”/proceed to consider whether the defense of medical care applies].

[or]

The state has presented evidence of more than one incident to prove aggravated sexual assault of a child as alleged [in the indictment/in count [*number*]]. To reach a guilty verdict [in this case/in count [*number*]], you must all agree that the state has proved elements [1 and 2/1, 2, and 3] listed above, and you

must also all agree that these elements occurred in the same incident. While it is permissible for you all to agree on more than one incident, to reach a guilty verdict in the case, you must all agree that these elements occurred in the same incident or incidents.

If you all agree the state has failed to prove, beyond a reasonable doubt, [one or both of elements 1 and 2/one or more of elements 1, 2, and 3] listed above, you must find the defendant “not guilty.”

If you all agree the state has proved, beyond a reasonable doubt, [both of the two elements/each of the three elements] listed above, and you all agree on the same incident or incidents when these elements occurred, you must [find the defendant “guilty”/proceed to consider whether the defense of medical care applies].

*[Insert defense if raised by the evidence; see CPJC 84.21. Insert any other instructions raised by the evidence. Then continue with the verdict form found in CPJC 2.1, the general charge, in Texas Criminal Pattern Jury Charges—
General, Evidentiary & Ancillary Instructions.]*

COMMENT

Aggravated sexual assault is prohibited by and defined in Tex. Penal Code § 22.021. The definitions of culpable mental states are derived from Tex. Penal Code § 6.03. The definition of “bodily injury” is from Tex. Penal Code § 1.07(a)(8). The definition of “serious bodily injury” is from Tex. Penal Code § 1.07(a)(46).

CPJC 84.20 Instruction—Aggravated Sexual Assault of Child under Six**INSTRUCTIONS OF THE COURT****Accusation**

The state accuses the defendant of having committed the offense of aggravated sexual assault of a child. Specifically, the accusation is that the defendant [*insert specific allegations, e.g., intentionally or knowingly caused the female sexual organ of [name], a child then under six years of age, to contact the defendant's sexual organ*].

Relevant Statutes

A person commits an offense if the person intentionally or knowingly causes the sexual organ of a child younger than six years of age to contact the sexual organ of another person, including himself.

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

1. the defendant intentionally or knowingly caused his sexual organ to contact the sexual organ of another person; and
2. the other person was, at the time, a child younger than six years of age.

Burden of Proof

The state must prove, beyond a reasonable doubt, the accusation of aggravated sexual assault of a child.

Definitions*Intentionally Causing Contact*

A person intentionally causes his sexual organ to contact the sexual organ of another person if it is his conscious objective or desire to cause that contact.

Knowingly Causing Contact

A person knowingly causes his sexual organ to contact the sexual organ of another person if he is aware that his conduct is reasonably certain to cause that contact.

[Select one of the following.]

On or about

The indictment alleges that the offense was committed on or about *[date]*. The state is not required to prove that the alleged offense happened on that exact date. It is sufficient if the state proves that the offense was committed before *[date of indictment]*, the date the indictment was filed.

[or, if raised by the evidence]

On or about

The indictment alleges that the offense was committed on or about *[date]*. The state is not required to prove that the alleged offense happened on that exact date. It is sufficient if the state proves that the offense was committed after *[date of defendant's seventeenth birthday]*, the date of the defendant's seventeenth birthday, and before *[date of indictment]*, the date the indictment was filed.

[Include if raised by the evidence and requested by the defense.]

Evidence of Wrongful Acts Defendant Possibly Committed

During the trial, you heard evidence that the defendant may have committed wrongful acts against *[name]* not charged in the indictment. *[If requested, include description of specific acts.]* The state offered the evidence to show the state of mind of the defendant and the child *[and/or]* the previous and subsequent relationship between the defendant and the child. You are not to consider that evidence at all unless you find, beyond a reasonable doubt, that the defendant did, in fact, commit the wrongful act against *[name]*. Those of you who believe the defendant did the wrongful act may consider it.

Even if you do find that the defendant committed a wrongful act, you may consider this evidence only for the limited purpose[s] described above. You may not consider this evidence to prove that the defendant is a bad person and for this reason was likely to commit the charged offense. In other words, you should consider this evidence only for the specific, limited purpose[s] described above. To consider this evidence for any other purpose would be improper.

[Include if raised by the evidence and requested by the defense.]

Evidence of Another Offense Defendant Possibly Committed

During the trial, you heard evidence that the defendant may have committed [an offense/offenses] [against [*name of extraneous victim*]/other than the one he is currently accused of in the indictment]. You are not to consider that evidence at all unless you find, beyond a reasonable doubt, that the defendant did, in fact, commit [the offense[s] against [*name of extraneous victim*]/the other offense[s]]. Those of you who believe the defendant committed [that offense/those offenses] may consider it.

You may consider this evidence for any bearing this evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant. Even if you consider it, however, the defendant is not on trial for any offenses not alleged in the indictment. You must determine if the state proved all the elements for the offense alleged in the indictment.

[Include if raised by the evidence and requested by the defense.]

State's Election of a Particular Incident

The state has offered evidence of more than one incident to prove aggravated sexual assault of a child as alleged in the indictment. The state is required to choose one of those incidents for you to consider in deciding whether it has met its burden of proof on that particular occasion. The incident that the state has chosen is [*insert specific incident, e.g., the first time that [name] testified that she remembered the defendant's sexual organ contacting her sexual organ*]. This is the only incident for which the defendant is on trial [in this case/in count [*number*]]. You are to confine your deliberations to deciding whether the defendant is guilty or not guilty of aggravated sexual assault of a child on that particular occasion. You cannot find the defendant guilty of aggravated sexual assault of a child based on an occurrence at any other time or place other than the incident that the state has chosen.

Also, you may not consider evidence of any other incident for any purpose unless you find, beyond a reasonable doubt, that such incident occurred. Even then, you may consider it only for the specific, limited purpose of determining [*insert limited purpose, e.g., the defendant's intent*].

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], intentionally or knowingly caused his sexual organ to contact the sexual organ of [name]; and
2. [name] was at the time a child younger than six years of age.

[Select one of the following. Choose the second option if incident unanimity has been raised by the evidence and there has been no request for election.]

You must all agree on elements 1 and 2 listed 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.”

If you all agree the state has proved, beyond a reasonable doubt, both of the two elements listed above, you must [find the defendant “guilty”/proceed to consider whether the defense of medical care applies].

[or]

The state has presented evidence of more than one incident to prove sexual assault as alleged [in the indictment/in count [number]]. To reach a guilty verdict [in this case/in count [number]], you must all agree that the state has proved elements 1 and 2 listed above, and you must also all agree that these elements occurred in the same incident. While it is permissible for you all to agree on more than one incident, to reach a guilty verdict in the case, you must all agree that these elements occurred in the same incident or incidents.

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.”

If you all agree the state has proved, beyond a reasonable doubt, both of the two elements listed above, and you all agree on the same incident or incidents when these elements occurred, you must [find the defendant “guilty”/proceed to consider whether the defense of medical care applies].

[Insert defense if raised by the evidence; see CPJC 84.21. Insert any other instructions raised by the evidence. Then continue with the verdict form found in CPJC 2.1, the general charge, in Texas Criminal Pattern Jury Charges—General, Evidentiary & Ancillary Instructions.]