

**JUSTICE COURT
LAS VEGAS TOWNSHIP
BATTERY DOMESTIC VIOLENCE
JURY TRIAL BENCH BOOK**



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I. INTRODUCTION

This Chapter pertains to criminal jury proceedings only.

Juries must consist of 12 jurors, but at any time before jury selection, the parties may stipulate in writing with the approval of the court that the jury consist of any number less than 12 but not less than six. See NRS 175.021, amended in 2021, effective January 2022.

The court may direct that not more than six jurors in addition to the regular jury be called and impaneled to sit as *alternate jurors*. (NRS 175.061(1)). The LVJC will seat one alternate juror.

II. OPENING OF COURT

Before the trial judge enters the courtroom, the Marshal will ensure all parties are ready to proceed.

The Marshal will bring the jury venire into the courtroom. The judge will then take the bench.

NOTE: All bolded text is to be read aloud by the judge.

III. IMPANELLING OF JURY

This is the time and place set for the trial of Case No. _____,
The State of Nevada vs. _____ (Name) _____, Defendant.

The record will reflect The State of Nevada is represented by
_____ (Name) _____, District Attorney; the Defendant is present
and represented by _____ (Name) _____ OR The Defendant has
exercised his/her right to self-representation.

Do both parties stipulate to the presence of the jury venire panel?
Are the parties ready to proceed?

Good morning ladies and gentlemen, you are in Department _____
_____ of the Las
Vegas Justice Court. My name is _____ and I am the
presiding judge in this department.

You have been called forward today to serve as jurors in a criminal case.
The Defendant, _____ (Name) _____, is charged with (Read middle
section of Criminal Complaint only). The Defendant has answered the charge
with a plea of Not Guilty.

A trial has a single purpose. It is a search for the truth. In a jury trial, the
Court, which is another way to refer to the Judge, and the jury have a division
of responsibilities. It is the duty of the jury to judge the facts in the case and the
duty of the Court to rule on the law.

We are seeking [12] impartial citizens plus 1 alternate to serve as jurors in this
case.

We expect this case to take approximately _____ days.

Each of you has the qualifications to serve as a juror of this Court. This call
upon your time does not frequently come to you, but it is part of your
obligation as a citizen in this State and Country. You should not avoid
fulfilling this obligation except under the most pressing circumstances.
Service on a jury affords you an opportunity to be part of the judicial process
by which the legal affairs and liberties of your fellow men and women are
determined and protected under our form of government. You are being
asked to perform one of the highest duties of citizenship.

The demand upon your time for this call to jury duty will not be unreasonable or unduly prolonged. Every effort will be made to see that your time is not wasted. The Court realizes that your service on a jury panel is not always convenient and that there are instances where service would be much more than a mere inconvenience and would constitute a great hardship on you or your family. Under these circumstances, the Court may excuse you for good cause.

The Clerk will now call the roll of the jury panel members who have been summoned to appear at this time. Please answer “present” when your name is called.

After roll call, ask Clerk:

Are there any absent?

If all are present, say:

Jurors are all present.

If any summoned jurors are not present, ask:

Will Counsel stipulate that we may proceed in the absence of those who have failed to appear?

If counsel refuses to stipulate, have objections placed on record, but proceed with trial. Direct the clerk of the court to issue orders to show cause for contempt to the prospective jurors failing to appear.

At the conclusion of calling the jurors, the clerk will swear the jurors, touching on their qualifications to serve.

All jurors, please stand. The Clerk will place you under oath as prospective jurors.

Two forms of oath follow. Use “non-religious” form when, for religious or other reasons, a juror refuses to take a sworn oath. See NRS 169.115, (Jones v. State, 94 Nev. 679, 585 P.2d 1340 (1978)).

Standard: Do you and each of you solemnly swear that you will well and truly answer all questions put to you touching upon your qualifications to serve as a juror in this case now pending before this Court, so help you God?

Non-Religious: Do you and each of you promise and affirm under the pains and penalties of perjury that you will well and truly answer all questions put to you touching upon your qualifications to serve as a juror? (NRS 16.030)

Ladies and Gentlemen, please be seated.

A. QUALIFYING OF JURY

The process of qualifying jury members includes a series of questions asked by the presiding judge, followed by questions asked by both parties to determine each juror’s suitability to serve as a juror in the case. The qualification process can be expedited by asking obvious disqualification questions of the entire prospective juror group at the outset and then specific disqualification questions of selected prospective jurors. The judge may also choose to make his/her decision on a juror’s qualification after he/she has asked questions, or wait and make the decision known after the attorneys have each asked their questions of the jurors.

Jurors may be dismissed from service by for-cause challenges or peremptory challenges. A for-cause challenge is made by an attorney after a juror has answered a question, which in the attorney’s view, would prevent the juror from adjudicating the facts fairly. (NRS 175036(1)). In addition to for-cause challenges, each attorney may dismiss for any reason whatsoever (peremptory) four additional prospective jurors. (NRS 175.051(2)). One additional peremptory challenge may be used for the alternate juror. (NRS 175.061(5)).

For challenges to the jury panel, see APPENDIX C.

For Justice Court trials, voir dire will be conducted with the panel as a whole. In the (hopefully) very rare event a 12 person jury with 1 alternate cannot be seated out of the panel, your Marshal will report to Jury Services for another batch of jurors.

At this time, I ask all the prospective jurors in the courtroom to give me your attention. The Court will ask you a number of questions. Following that, the District Attorney and the Attorney for the Defendant may ask you some questions. The purpose of these questions is to determine if you are qualified to act as fair and impartial jurors in this matter. (NRS 175.031)

Ladies and Gentlemen, as a rule, prior to speaking in court, you must identify yourself by the last three numbers on your juror badge. This is necessary because everything that is said in court is reported and we need a way to identify the speaker.

Additionally, the parties and court staff are prohibited from talking to you about this case so please do not think they are being rude if they ignore you. You are also prohibited from talking to them about the case. Should you need anything as it relates to your jury service, please contact the Marshal.

The court shall conduct the initial examination of prospective jurors (NRS 175.031). The initial questions are asked of the entire venire.

Please raise your hand if your answer is “yes” to any of the following questions.

- 1. Is there anyone who has a disability or medical issue that will impact their ability to serve as a juror in this case?**
- 2. Is there anyone who has been convicted of a felony?**
 - a. What was the category of the felony?**
 - b. Were you placed on probation or parole? If so, when did you finish? Did you go to prison and expire your sentence? When was that? ¹**

¹ **NRS 176A.850** (4) A person who has been discharged from probation: (d) Six years after the date of discharge from probation, is restored to the right to serve as a juror in a criminal action.

NRS 213.155 (1) A person who receives a discharge from parole pursuant to NRS 213.154: (c) Six years after the date of his or her discharge from parole, is restored to the right to serve as a juror in a criminal action.

NRS 213.157 (1) A person convicted of a felony in the State of Nevada who has served his or her sentence and has been released from prison: (d) Six years after the date of his or her release from prison, is restored to the right to serve as a juror in a criminal action.

3. **We anticipate this case is going to last _____ day(s). Serving on a jury is almost always a personal or financial hardship, financial hardship is not a justifiable cause to excuse you from serving as a juror. Does anyone have an extreme hardship that would not allow them to be here for the rest of the day (chance of _____ days)?**
4. **Are any of you acquainted with me or any of the court staff?**
5. **Do any of you know each other?**
6. **Are any of you acquainted with the defendant or his/her attorney?**
7. **Are any of you acquainted with the deputy district attorneys?**
8. **Are any of you acquainted with Steve Wolfson or any other person in the district attorney's office?**
9. **I'm going to read a list of names of potential witnesses that may be called to testify. Please let me know if you are acquainted with any of the witnesses. (The Court will read the list of witnesses provided by the parties beforehand.)**
10. **Does anyone have any philosophical, religious or other belief that would prevent you from serving as a fair and impartial juror?**
11. **Under our system, certain principles apply in every criminal trial. They are:**
 - a. **That the charging document filed in this case is merely an accusation and is not evidence of guilt;**
 - b. **That the defendant is presumed innocent; and**
 - c. **The State must prove that defendant is guilty beyond a reasonable doubt.**

Does anyone not understand or believe in these concepts?

12. **Is there anyone who would have trouble following the instructions on the law I give you, regardless of whether you agree or disagree with the law?**

A break is only necessary if a juror raises an extreme hardship and/or a juror raises a for-cause issue the parties would want to discuss.

I will now briefly confer with the attorneys in chambers (if necessary). Please be at ease for a few moments and we will return to the courtroom shortly.

Please keep notes of discussion regarding for-cause challenges as a record will need to be made at recess.

Now each of you will answer a set of questions that are listed on the _____ . Please answer each question aloud after identifying yourself by the last 3 numbers on your juror badge: (Court should go in order of seating chart)

- 1. How long have you lived in Clark County?**
 - a. If less than 10 years, where did you live before you moved here?**

- 2. How far did you go in school?**
 - a. If you have attended college or technical school, what area did you study?**
 - b. Did you earn a degree or certificate?**

- 3. Are you employed?**
 - a. If yes, what sort of work do you do?**
 - b. If you are retired or unemployed, what sort of work have you done in the past?**
 - c. Are members of your family employed in law enforcement? IF SQ: Will you treat a police officer's testimony the same as any other citizen who testifies?**

- 4. Are you married or in a significant relationship?**
 - a. If yes, what sort of work does your spouse/significant other do?**

- 5. Do you have children?**
 - a. If yes, what are their ages and genders?**
 - b. If you have adult children, what sort of work do they do?**

6. **Have you ever served as a juror before?**
 - a. **If yes,**
 - i. **How many times?**
 - ii. **When?**
 - iii. **Where?**
 - iv. **Civil or Criminal?**
 - v. **Without telling us what the verdict was, was the jury able to reach a verdict?**
 - vi. **Were you the foreperson?**

Now we will conduct the last portion of the Court's questions. These questions are not meant to pry into your personal matters or to embarrass you but rather to ensure you can be fair and impartial to each party in this case:

1. **Have you ever been the victim of a crime, including domestic violence related crimes? If Yes:**
 - a. **When and where?**
 - b. **Was the crime reported?**
 - c. **Was the person caught?**
 - d. **Did the police respond?**
 - e. **Did you ever have to go to court?**
 - f. **Did the DA's Office handle the case?**
 - g. **Were you satisfied with how the case was handled?**
 - h. **Is there anything about that experience that would cause you not to be fair and impartial in this case?**

2. **Have you ever been accused of a crime, including domestic violence related crimes? If yes:**
 - a. **When and where?**
 - b. **Were you charged?**
 - c. **Did you go to trial?**
 - d. **Were you convicted of anything? What was it?**
 - e. **Did the DA's office handle the case?**
 - f. **Were you satisfied with how the case was handled?**
 - g. **Is there anything about that experience that would cause you not to be fair and impartial in this case?**

3. Has any family member or anyone closely associated with you ever been the victim of a crime, including domestic violence? If yes:

- a. **When and where?**
- b. **Was the crime reported?**
- c. **Was the person caught?**
- d. **Did the police respond?**
- e. **Did you ever have to go to court with them?**
- f. **Did the DA's Office handle the case?**
- g. **Were you satisfied with how the case was handled?**
- h. **Is there anything about that experience that would cause you not to be fair and impartial in this case?**

4. Has any family member or anyone closely associated with you ever been accused of a crime, including domestic violence? If yes:

- a. **When and where?**
- b. **Were they charged?**
- c. **Did they go to trial?**
- d. **Were they convicted of anything? What was it?**
- e. **Did the DA's office handle the case?**
- f. **Were you satisfied with how the case was handled?**
- g. **Is there anything about that experience that would cause you not to be fair and impartial in this case?**

5. Is there anything about the nature of this case or anything that you heard here today that would cause you to not be fair and impartial in this case?

6. Can you base your verdict solely on the evidence presented at the trial and wait to form an opinion until you've heard all the evidence?

7. Can you be fair to both sides in this case?

8. MULTIPLE DEFENDANT CASE – Can you evaluate the State's case against each of the defendants individually?

9. CASE SPECIFIC QUESTIONS (these questions would have been submitted to the Court prior to the trial date)

Questioning of all prospective jurors by the Court has now been completed. You may either excuse for cause any juror whose answers to the above questions affect their suitability to serve as a juror in this case, or reserve your decision until the attorneys have asked their questions in voir dire.

Can parties approach? (Clerk turns on white noise). **Does either party want to make a challenge for-cause?** (If so, parties go into back hallway for argument and decision. Please keep good notes so a record can be made outside the presence of the jury during the next break. If not, panel can be passed to the parties for follow-up questions.)

If a juror is to be excused for-cause, say:

You are excused from jury service today. Thank you very much for coming.

Ladies and Gentlemen, thank you for your time today. You are excused. You do not need to return to jury services. You are free to leave. For those of you remaining, please listen for your seat assignment.

Counsel have the right to supplement the examination and the Court must not unreasonably restrict it. The Court, however, has the right and duty to keep attorney-conducted voir dire within its permissible scope of obtaining an impartial jury. NRS 175.031; (Whitlock v. Salmon, 104 Nev. 24, 752 P.2d 210 (1988)).

Ladies and Gentlemen, I am going allow counsel to ask a brief set of follow-up questions. The Deputy District Attorney will go first.

Parties will ask questions of the panel. Should either party want to make a for-cause challenge based upon their questions, parties should approach and utilize the same process as for-cause challenge(s). Be sure to make a record of this decision if challenges are raised and decided during a side bar. After the State finishes its questions, the Defense will ask its questions. Both parties will then be asked if they pass the panel as accepted. The prospective alternate jurors will also need to be passed for cause.

The parties will now exercise their peremptory challenges, if any.

Each side is entitled to four peremptory challenges. (NRS 175.051(2)). The state and the defendant shall exercise their challenges alternately, in that order. Any challenge not exercised in its proper order is waived. (NRS 175.051(3)). Each side is entitled to one peremptory challenge for the alternate juror. (NRS 175.061(5)).

Parties, please approach. (White noise) **Does either party have a challenge to the peremptory challenges used?** (*Batson* and other related challenges)

For procedures related to Batson challenges, see APPENDIX D.

Ladies and Gentlemen, the clerk will read seat assignments out loud. If your badge number is not called, you have not been selected and you are excused.

Clerk will read seat assignments aloud.

B. SWEARING OF JURORS

NOTE: In a criminal case, jeopardy attaches once the jury is sworn. So, if you are close to the lunch break, take the break, then swear in jurors AFTER lunch.

Ladies and Gentlemen, please stand. The Clerk will administer the oath to the jury: (The Clerk administers the following oath to the jury and alternate.)

(Standard) **Do you and each of you solemnly swear that you will well and truly try this case, now pending before this Court, and a true verdict render according to the evidence given, so help you God?**

(Non-Religious) **Do you and each of you affirm under the pains and penalties of perjury that you will well and truly try this case now pending before this Court and a true verdict render according to the evidence given?**

C. INFORMING JURY OF RIGHT TO TAKE NOTES/ASK QUESTIONS (NRS 175.131)

Before we get started with opening statements and presentation of evidence, I want to advise you that you may individually take notes during the course of this trial, but I caution you not to rely upon them exclusively and to not let note taking distract you. Do not share your notes until deliberation, if at all.

The Marshal will give each of you a notebook and pencil.

Jurors may ask questions. You must write your juror number and question on a form provided by the Marshal while the witness is still in the courtroom. If it's a proper question and allowed under the rules of evidence, I'll ask it. Please reserve your questions until the attorneys have finished asking questions of the witness. Jurors must not place undue weight on the responses to their questions or draw any conclusions because a question was not asked.

The Marshal should distribute notebooks and pencils at this time. Have the Marshal secure the notebooks at each recess and any overnight recess.

D. JURY ADMONITION (NRS 175.121)

Finally, I must also admonish you that:

- 1. No juror may declare to his fellow jurors any fact relating to the case as of his/her own knowledge, and**
- 2. If any juror discovers during the trial or after the jury has retired that he/she or any other juror has personal knowledge of any fact in controversy in the case, he/she shall disclose such situation to the Judge out of the presence of the other jurors, and**
- 3. When any such disclosure is made, the Judge shall examine the juror who admits such personal knowledge, under oath, in the presence of the counsel for the parties, and may allow such counsel to examine the juror.**

E. READING OF COMPLAINT

The Clerk reads the entire Complaint to the jury (unless Defendant is charged with DV 2nd in which case the Clerk will read a redacted copy); states the day it was filed, and the plea thereto.

The Clerk will now read the Complaint filed by the State of Nevada in this case and state to the jury the plea entered by the Defendant, (Name).

F. READING OF THE PRELIMINARY INSTRUCTIONS

I'm going to read some preliminary instructions and then we will get to the case. What I say now is intended to serve as an introduction to the trial of this case. These instructions and those I will give you later during the course of this trial are not evidence, but aim to assist you in doing your duty as judges of the facts in this case. These instructions are intended to explain the general procedure we use, the order in which the case will be presented, and provide an explanation of your responsibilities while hearing the case.

The trial will proceed in the following order:

First, the parties have the opportunity to make opening statements. The District Attorney will make an opening statement outlining the State's case. Counsel for the Defendant, _____ (Name) _____, may make an opening statement then or reserve his opening statement until the conclusion of the State's case. Opening statements are not evidence. They serve as an introduction to the evidence which the party making the statement intends to prove. (NRS 175.141)

Second, the State will introduce evidence in support of the charge contained in the Complaint.

Third, after the State has presented its evidence, the defendant, _____ (Name) _____, may present evidence, but is not required to do so. Also, the defense may present evidence to refute (rebut) any evidence previously given, but is not required to do so.

Fourth, this is a criminal case. The Defendant is entitled to a presumption of innocence. This presumption remains with the defendant unless and until the presumption is overcome by competent evidence. The burden is always on the State to prove every element of the offense charged beyond a reasonable doubt. The law never imposes the burden of calling any witnesses or introducing any evidence in a criminal case on the Defendant.

Fifth, during the trial, it may be necessary for me to consult with the attorneys from time to time concerning questions of law or procedure. I may do this at the bench, out in the hallway, in chambers or I may excuse you from the courtroom while I consult with the attorneys. Please remember this case is important and to please be patient during any of these interruptions.

Sixth, at the conclusion of the evidence I will instruct you in the law and the parties will have the opportunity to present closing arguments. The closing arguments are not evidence, but are intended to help you understand the evidence and apply the law.

Seventh, you will then retire to the jury room to consider the case. You will select a foreperson, deliberate, and arrive at a verdict which must be unanimous.

Eighth, the law as given by the Court in this and other instructions constitutes the only law you may rely upon for your guidance and it is your duty to accept and follow it.

Ninth, your purpose as jurors is to judge the facts from the evidence and the reasonable inferences arising from such evidence, and in so doing, you must not indulge in guesswork or speculation.

Tenth, the evidence which you are to consider consists of the testimony of witnesses and the exhibits admitted in evidence. The term “testimony of witness” means what you hear from anyone who testifies. The term “exhibit” means any evidence that is represented by something you can see, e.g., a written document, a picture, a drawing. The admission of evidence in court is governed by rules of law and evidence. From time to time, it may be the duty of the attorneys to make objections and my duty as Judge to rule on those objections and decide whether you can consider certain evidence. You must not concern yourself with the objections or the Court’s reasons for these rulings. You must not consider testimony or exhibits to which an objection was sustained or which has been ordered stricken.

You must not be influenced in any degree by any personal feeling or sympathy for or prejudice against any party to this action, for each party is entitled to the same fair and impartial consideration.

What I say during the course of the trial is not to indicate my opinion as to what the facts are. You are to determine the facts. In this determination, you alone must decide upon the believability of the evidence and its weight and value. In considering the weight and value of the testimony of any witness you may take into consideration the appearance, attitude and behavior of the witness, the interest of the witness in the outcome of the trial, the relation of the witnesses to any parties to the trial, the inclination of the witness to speak truthfully or not, the probability or improbability of the witnesses’ statements, and all other facts and circumstances in evidence. Thus, you may give the testimony of any witness just such weight and value as you may believe the testimony of such witness is entitled to receive.

H. ADMONITION (NRS 175.401)

NOTE: The substance of this admonition prohibiting discussion or receiving outside information is to be repeated by the Judge at each adjournment/recess.

Until this case is submitted to you for your deliberation, you must not discuss this case with anyone or remain within hearing of anyone discussing it. You also are not to read, watch or listen to any report or commentary on the trial from any medium of information including all forms of social media, newspapers, radio and television. You are to keep an open mind and not form or express any opinions during the trial. You shall not decide any issue in the case until the case is submitted to you for your deliberation under the instructions of the Court. After this case has been submitted to you, you must discuss this case only in the jury room when all members of the jury are present.

IV. COMMENCEMENT OF TRIAL

Are the parties ready to proceed?

A. EXCLUSION OF WITNESSES (NRS 50.155)

If both sides announce they are ready for trial, make the following statement if trial witnesses are present in the courtroom:

You have the right to have all witnesses excluded from the courtroom during the trial of this case, if you so desire. NOTE: Victims and witnesses must be provided a secure waiting area. NRS 178.5696. An attendant may be present in court to provide support to the victim. NRS 178.571.

If witnesses are to be excluded, give the following order:

All witnesses in this case are ordered excluded from the courtroom except while testifying. You are further ordered to wait _____ (Location) _____ and are further ordered not to discuss your testimony between yourselves or with anyone except the attorneys until the testimony has concluded. Thank you.

B. PROCEEDINGS

Evidence must be presented in open court. NRS 171.221. The Court controls the mode and order of presenting evidence and in interrogating witnesses. NRS 50.115. The Court may call its own witnesses or interrogate any witnesses called (but both processes should be exercised sparingly and with extreme caution). NRS 50.145

The District Attorney, _____ (Name) _____, may now proceed.

After the District Attorney concludes his/her opening statement:

_____ (Defense Attorney) _____, **would you like to make an opening statement?**

Defense attorney states he/she wants to make the opening statement and does – or states he/she wants to reserve his/her opening statement.

The State may now call its first witness.

The Court should inquire whether the jury has any questions for each witness before the witness is excused.

Please make sure to make a record of any argument and ruling regarding juror questions outside the presence of the jury.

After the State has presented all of its witnesses/evidence, say:

State, do you rest?

Defense, you may now proceed.

If Defense decides not to present evidence, canvass Defendant outside the presence of the jury regarding his/her right to testify.

If the District Attorney indicates an intention to present rebuttal evidence, say:

The District Attorney now has the opportunity to present evidence in rebuttal.

C. INSTRUCTIONS TO JURY (NRS 175.161)

Once the parties have presented all witnesses/evidence, you may take a break before closing arguments (if necessary). Any objections to the jury instructions may be raised during this break. However, in LVJC the Department should be aware that objections to jury instructions and argument were heard on the record by the DV Court prior to the case being transferred to the Department for trial.

Ladies and Gentlemen of the jury, you have now heard all the evidence. Before the case may be argued by the attorneys and submitted to you for deliberation, we will take a short recess.

Admonition is read to jury by Judge. (See Section III (H)).

Outside the presence of the jury, make the following record:

Counsel, you may note your objection to any of the jury instructions. However, I will not take further argument at this time. Please note, your objection will preserve the issue on appeal.

(When the jury returns)

Court is back in session.

Ladies and Gentlemen of the Jury, I am about to instruct you upon the law, as it applies to this case. I must read these instructions to you, as they are of such importance that almost every word is of some significance. These instructions are relatively long, and some are quite complicated. If they are not especially clear when I read them to you, please bear in mind that when you go to the jury room, you will be able to take these written instructions with you, so that you can read them there and consider them carefully.

Jury Instructions are read to the Jury (Providing a copy of the instructions to each juror prior to the reading is recommended.)

D. CLOSING ARGUMENT (NRS 175.141(5))

 District Attorney , you may now make your closing argument.

 Defense Attorney , you may now make your closing argument.

 District Attorney , you may now make your rebuttal closing argument.

E. PREPARING THE JURY TO RETIRE (NRS 175.421)

You are now ready to retire to the jury room for deliberation. You may take your notebook and pencil with you. Copies of the instructions I just read to you will also be provided along with the evidence admitted during trial. However, you are to relinquish all cell phones and other communication devices to the Marshal. Please provide a name and phone number if you wish the court to inform someone you are in deliberation and unavailable at this time. No outside contact or internet connections are allowed during deliberations.

The Clerk will now swear the Marshal to take charge of the jury.

Clerk swears in the jurors' Marshal:

Do you solemnly swear that you will conduct this jury to some private and convenient place for their deliberation; there keep them together; that you will suffer no person in any manner to speak to or communicate with them, nor do so yourself, except to ask them if they have agreed upon a verdict, and when they have agreed, that you will conduct them into court, unless otherwise ordered by the court, so help you God?

The alternate juror will now be randomly selected if not selected at the commencement of the trial:

Juror, # , you are the alternate. Please remain while the jurors are escorted to the jury deliberation room.

Once jurors are excused, obtain the alternate's cell phone number and ask him/her to stay within the vicinity in case his/her services are requested.

F. JURY REQUESTS DURING DELIBERATION (NRS 175.451)

In the event the jury seeks further information or instructions, the Marshal should ask the jury to put the request in writing and notify the Judge. The Marshal is not to inquire as to the substance of their request. Before the jury is given any information, a copy of the written request or notice is to be given to the District Attorney and Defendant or Defense Counsel who have a right to be present and comment before the Court makes its response. The record must reflect both the inquiry and the response made (which should be in writing).

If the jury indicates to the Marshal they are “deadlocked” the Court should notify counsel and solicit input as to the proper response. If the jury has been deliberating for a short period of time, the response might be to simply inform the jurors in writing to continue to deliberate. If the jury has been deliberating for a lengthy period, then a written inquiry from chambers to the foreperson of the jury as to the numerical division of the jurors *without* indicating which way the jurors are leaning may be appropriate. The Court may then decide whether or not to give the jury an Allen instruction.² If so, the Court should bring the jury out for an Allen instruction.

The approved version of the Allen instruction reads as follows:

“The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.”

“It is your duty, as 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, but 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 convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.”

² Allen v. United States, 164 U.S. 492 (1896)

If the jurors continue to be deadlocked or have reached a verdict:

G. RETURN OF THE JURY (NRS 175.481)

Will Counsel stipulate to the presence of all jurors?

(If jurors are absent, recess court and send the marshal to find them.)

Ladies and Gentlemen of the Jury, which of you has been selected as Foreperson? Sir/Ma'am, will you please state your name for the record?

(Foreperson announces his/her name)

 (Foreperson's name) **has the jury reached a verdict?**

(Foreperson stands and answers yes or no) If the Foreman answers “Yes”, say:

Mr./Ms. Foreperson, will you please hand the verdict to the Marshal.

The Marshall will hand the verdict to the Judge; the Judge will read the verdict to her/himself and hand it to the Clerk if there are no inconsistencies or no incompleteness.

The Clerk will now read the verdict aloud.

If the Foreperson has answered “No”, say:

 Foreperson's Name , **do you think if given more time the jury might reach a verdict, it being your duty to do so if possible?**

If the answer is “Yes”, excuse the jury for further deliberations. If the answer is “No”, apply NRS 175.461 (no reasonable probability of a verdict), address the courtroom audience and say:

Ladies and Gentlemen, the jury has failed to reach a verdict. It being apparent that the jury is unable to reach a verdict, this Court has no alternative but to declare a hung jury and mistrial of this case. Ladies and Gentlemen of the Jury, thank you very much for your service, you're excused.

V. POLL (NRS 175.531)

When a verdict is returned and before it is recorded, ask the parties:

Does either party request that the jury be polled?

If the request is made, the Clerk calls the roll and asks each juror if this is his or her verdict. If any juror answers “No”, the jury must be sent out for further deliberation.

The Clerk will now record the verdict of the jury in the minutes of this case.

VI. DISMISSAL OF JURY

Ladies and Gentlemen of the Jury, I thank you for your service in this case. You are now excused. You are now free to discuss this case with anyone but you are not required to answer any questions.

Jury does not need to check out. Your Marshal/JEA should provide checks to them.

If the verdict is “Not Guilty”:

The jury having found the Defendant _____ (Name) _____, “Not Guilty”, the Court now enters upon the minutes a Judgment of Acquittal.

If the Defendant is in-custody:

The Defendant _____ (Name) _____, is ordered released from custody and any bail posted exonerated.

If the verdict is “Guilty”:

The Jury having found the Defendant “Guilty” of the offense of _____, a judgment of guilt will be entered and the Defendant will be sentenced on _____ (date/time)_____.

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STOCK
BATTERY DOMESTIC VIOLENCE
JURY INSTRUCTIONS

APPENDIX A

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INST

JUSTICE COURT
LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
-vs-
JOHN DOE
Defendant.

CASE NO: 19M-
DEPT NO:

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

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If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

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A Complaint is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in Complaint that on or about the 19th day of September, 2019, the Defendant committed the offense of BATTERY CONSTITUTING DOMESTIC.

COUNT 1 - BATTERY CONSTITUTING DOMESTIC VIOLENCE

did willfully and unlawfully use force or violence against or upon the person of his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons or his minor child, to wit: JANE DOE, by punching and/or hitting the said JANE DOE about the arm(s) and/or forehead and/or head and/or face and/or kicking her.

INSTRUCTION NO. _____

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It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of the offense charged.

Battery means any willful and unlawful use of force or violence upon the person of another.

The force used by the defendant need not be violent or severe, and need not cause bodily pain or bodily harm.¹ Any slight touching by the defendant upon the person of another suffices, as long as the touching was intentional and unwanted.²

The word “willfully”, when applied to the intent with which an act is done, implies simply a purpose or willingness to commit the act in question. It does not require in its meaning that the defendant held any intent to violate any law, or to injure another, or to acquire any advantage.³

¹NRS 200.481; Hobbs, 251 P.3d at 179-80 (2011)

²Hobbs, 251 P.3d at 179-81

³Childers v. State, 100 Nev. 280, 282-83, 680 P.2d 598, 599 (1984)

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INSTRUCTION NO. _____

If you find the Defendant guilty of Battery, you must also determine whether or not the battery constitutes domestic violence.

Battery Constituting Domestic Violence occurs when a person commits a battery upon his or her spouse, former spouse, any other person to whom the person is related by blood or marriage, any other person with whom he or she has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child.

As used in these instructions, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context⁴.

⁴NRS 33.018

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

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2 The Defendant is presumed innocent unless the contrary is proved. This presumption
3 places upon the State the burden of proving beyond a reasonable doubt every element of the
4 crime charged and that the Defendant is the person who committed the offense.

5 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
6 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
7 the jurors, after the entire comparison and consideration of all the evidence, are in such a
8 condition that they can say they feel an abiding conviction of the truth of the charge, there is
9 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
10 speculation.

11 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict
12 of not guilty.
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2 The evidence which you are to consider in this case consists of the testimony of the
3 witnesses, the exhibits (if any), and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the
5 testimony of a person who claims to have personal knowledge of the commission of the crime
6 which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a
7 chain of facts and circumstances which tend to show whether the Defendant is guilty or not
8 guilty. The law makes no distinction between the weight to be given either direct or
9 circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial
10 evidence, should be considered by you in arriving at your verdict.

11 Statements, arguments and opinions of counsel are not evidence in the case. However,
12 if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence
13 and regard that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a
15 witness. A question is not evidence and may be considered only as it supplies meaning to the
16 answer.

17 You must disregard any evidence to which an objection was sustained by the court and
18 any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must
20 also be disregarded.

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2 The credibility or believability of a witness should be determined by his manner upon
3 the stand, his relationship to the parties, his fears, motives, interests or feelings, his
4 opportunity to have observed the matter to which he testified, the reasonableness of his
5 statements and the strength or weakness of his recollections.

6 If you believe that a witness has lied about any material fact in the case, you may
7 disregard the entire testimony of that witness or any portion of his testimony which is not
8 proved by other evidence.

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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.

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During your deliberation, you must not communicate with anyone other than each other in any way regarding the case or its merits- either by phone, email, text, internet, or other means; you must not read, watch, or listen to any news or media accounts or commentary about the case; you must not do any research, such as consulting dictionaries, using the internet, or using reference materials; and you must not make any investigation, test a theory of the case, re-create any aspect of the case, conduct any experiments, or in any other way investigate or learn about the case on your own.

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INSTRUCTION NO. _____

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the Defendant is guilty or not guilty.

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2 When you retire to consider your verdict, you must select one of your member to act as
3 foreperson who will preside over your deliberation and will be your spokesperson here in
4 court.

5 During your deliberation, you will have all the exhibits which were admitted into
6 evidence (if any), these written instructions and forms of verdict which have been prepared for
7 your convenience.

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it
9 signed and dated by your foreperson and then return with it to this room.

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2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed
4 by the foreperson. The officer will then return you to court where the information sought
5 will be given you in the presence of, and after notice to, the district attorney and the
6 Defendant and his counsel.

7 Readbacks of testimony are time-consuming and are not encouraged unless you deem
8 it a necessity. Should you require a playback, you must carefully describe the testimony to be
9 played back so that the court recorder can arrange her notes. Remember, the court is not at
10 liberty to supplement the evidence.

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Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:

JUSTICE OF THE PEACE

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**SPECIAL
JURY INSTRUCTIONS**

APPENDIX B

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INSTRUCTION NO. _____

The State must prove beyond a reasonable doubt that the defendant had a domestic relationship with the named victim in order to be found guilty of the offense of Battery Constituting Domestic Violence.

If you have a reasonable doubt that the defendant had a domestic relationship with the named victim, you must find the defendant not guilty of Battery Constituting Domestic Violence.

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INSTRUCTION NO. _____

The State must prove beyond a reasonable doubt that the defendant committed a battery upon the named victim in order to be found guilty of the offense of Battery Constituting Domestic Violence. If you have a reasonable doubt that the defendant committed a battery upon the named victim, you must find the Defendant not guilty of Battery Constituting Domestic Violence.

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INSTRUCTION NO. _____

When a person is accused of committing a particular crime and at the same time and by the same conduct may have committed another offense of lesser grade or degree, the latter is with respect to the former, a lesser related offense.

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense charged, he may, however, be found guilty of any lesser related offense, if the evidence is sufficient to establish his guilt of such lesser offense beyond a reasonable doubt.

The offense of Battery Constituting Domestic Violence necessarily includes the lesser offense of Battery.

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INSTRUCTION NO. _____

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

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INSTRUCTION NO. _____

It is the constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

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INSTRUCTION NO. _____

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

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INSTRUCTION NO. _____

You heard testimony given in a foreign language. An interpreter provided a translation for you at the time that the testimony was given. You must rely on the translation provided by the interpreter, even if you understand the language spoken by the witness. Do not retranslate any testimony to other jurors.

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INSTRUCTION NO. _____

The fact that a witness had been convicted of a felony, if such be a fact, may be considered by you only for the purposes of determining the credibility of that witness.

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INSTRUCTION NO. _____

Resistance to the commission of a public offense may be made by the party to prevent an offense against his/her person or family member about to be injured to or to prevent an illegal attempt, by force, to take, or injure any property in his or her possession.

Resistance may be made in aid or defense of a person about to be injured.

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INSTRUCTION NO. _____

It is lawful for a person who has grounds for believing and does believe that bodily injury is being or is about to be inflicted upon himself to protect himself from attack. In doing so, he may use all force and means which such person believes to be reasonable and necessary to prevent injury which appears to be imminent.

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INSTRUCTION NO. _____

Mere words or gestures by the victim, however abusive or insulting, are no defense to a battery prosecution.

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INSTRUCTION NO. _____

A bare fear of bodily injury is not sufficient to justify use of force. To justify a battery or attempted battery of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person committing or attempting to commit the battery must act under the influence of those fears alone and not in revenge.

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INSTRUCTION NO. _____

The amount of force used must be reasonable and necessary under the circumstances. The law does not justify the use of a greater degree of force than is reasonably necessary nor does it justify a person who has been acting in self-defense in the infliction of further injuries upon his assailant after there is no longer any apparent danger.

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INSTRUCTION NO. _____

The right of self-defense is not generally available to an original aggressor, that is a person who has sought a quarrel.

The original aggressor is only entitled to self-defense if he makes a good faith endeavor to decline any further struggle before committing the international battery upon another.

Where a person without voluntarily seeking, provoking, inviting or willingly engaging in an act of his own free will is attacked by an assailant, he has the right to stand his ground and need not retreat to defend or resist use of force by another.

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INSTRUCTION NO. _____

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

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INSTRUCTION NO. _____

If you are not convinced beyond a reasonable doubt that the defendant used force upon the person of another for the purpose of committing battery, rather than for the purpose of self-defense or to resistance, you must find the defendant not guilty of the charge.

VERDICT FORM

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6 DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

CASE NO: 19M

9 -vs-
10 JOHN DOE,

DEPT NO:

11 Defendant.

12 **VERDICT**

13 We, the jury in the above entitled case, find the Defendant JOHN DOE, as follows:

14 **COUNT 1** – BATTERY CONSTITUTING DOMESTIC VIOLENCE

15 *(Please check the appropriate box, select only one)*

- 16 Guilty of Battery Constituting Domestic Violence
- 17 Guilty of Battery
- 18 Not Guilty
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25 DATED this _____ day of January, 2022

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FOREPERSON

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Motion to Strike Jury Venire

6th & 14th Amendments of the US Constitution guarantee a venire selected from a fair cross-section of the community. *Williams v. State*, 121 Nev. 934, 939, 125 P. 3d 627, 631 (2005).

To demonstrate a prima facie violation of the fair-cross section requirements, D must show:

- (1) The group alleged to be excluded is a “distinctive” group in the community;
- (2) That the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and
- (3) That this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

Id. at 940, 125 P. 3d at 631.

Prong #1

“Distinctive” group

Prong #2

To determine whether the representation of the group in the venire is fair and reasonable, the Court calculates the absolute and comparative disparities. *Morgan v. State*, 134 Nev. 200 (2018) citing *Evans v. State*, 112 Nev. 1172, 1187, 926 P. 2d 265, 275 (1996).

A comparative disparity well over 50% is strong evidence of underrepresentation. See *Morgan* citing *Evans*.

Prong #3

As long as the jury selection process is designed to select jurors from a fair cross-section of the community, then random variations that produce venires without a specific class of persons or with an abundance of that class are permissible. See *Williams*.

Where parties were provided with a transcript from a hearing in a different case, where the jury commissioner testified about the jury selection process used in Clark County, Court found that the process explained provided no opportunity for systematic exclusion of specific race. *Battle v. State*, 385 P. 3d 32 (2016).

Batson Challenge (See Batson v. Kentucky, 476 U.S. 79 (1986))

The 6th & 14th Amendments of the US Constitution guarantee a right to an impartial jury. While a Defendant is not entitled to have a jury completely or partially composed of people of his own race, the State is not permitted to use its peremptory challenges (don't need to state a reason) to automatically exclude potential members of the jury because of their race.

A Batson Challenge is an objection to the validity of a peremptory challenge on the grounds that it is being used for a discriminatory purpose, i.e., to exclude a potential juror based on race, ethnicity, or sex.

Defendant must make an initial showing (prima facie) that the peremptory challenge(s) were used for a discriminatory purpose. The objection must be sufficiently detailed based upon the numbers and qualities or qualifications of the jurors at issue.

Once the Defendant makes a prima facie showing, the burden shifts to the State to come forward with a neutral explanation for challenging those particular jurors not based on race, religion, sex or ethnicity. To be "neutral" they must be rational and reasonable.

If the court grants a Batson challenge, then it must seat the potential juror who was excluded by the State.

NOTE: This argument should be held outside the presence of the jury. Make sure not to release the juror at issue until the challenge is either granted or denied.

BATTERY/DOMESTIC VIOLENCE PENALTIES

(For Offenses occurring **on or after** January 1, 2019)

1st OFFENSE WITHIN 7 YEARS (MISDEMEANOR):

At least 2 days in jail but not more than 6 months;
At least 48 hours, but not more than 120 hours, of community service;
A fine of not less than \$200, but not more than \$1,000;
Mandatory participation in weekly counseling sessions of not less than 1 1/2 hours per week for not less than 6 months, at a certified agency, at Defendant's expense.

2nd OFFENSE WITHIN 7 YEARS (MISDEMEANOR):

At least 20 days in jail but not more than 6 months;
At least 100 hours, but not more than 200 hours, of community service;
A fine of not less than \$500, but not more than \$1,000;
Mandatory participation in weekly counseling sessions of not less than 1 1/2 hours per week for not less than 12 months, at a certified agency, at Defendant's expense.

3rd OFFENSE WITHIN 7 YEARS:

A category B felony punishable by a sentence of imprisonment in the Nevada State Prison for at least 1 year but not more than 6 years; and a fine of at least \$1,000 but not more than \$5,000. A defendant is not eligible for probation for a third offense.

FOR ALL 1st, 2nd, AND 3rd OFFENSES WITHIN 7 YEARS:

An offense constitutes a prior offense so long as it occurs within seven years of the instant offense, regardless of the sequence of offenses and convictions. An offense also constitutes prior offense if the offense was dismissed in connection with successful completion of a diversionary program or specialty court program, or if the offense was conditionally dismissed pursuant to NRS 176A.290, without regard to the sequence of the offenses.

CONSEQUENCES FOR ALL OFFENSES:

In addition to any other penalty, in the Court's discretion, the Court may order me to participate in an alcohol or drug treatment program at my expense; and, in the Court's discretion, if it appears from information presented to the Court that a child under the age of 18 years may need counseling as a result of the commission of a battery which constitutes domestic violence, the Court may refer the child to an agency which provides protective services, and, if that occurs, the Court will require me to reimburse the agency for the costs of any services provided, to the extent of my ability to pay. There may also be certain fees or assessments required by statute.