

PREFACE TO 2026-2027 EDITION

This edition has been expanded to cover two additional crimes. Instructions on the crime of driving without an ignition interlock device are included in a new § 5:6. Instructions covering first degree manslaughter based on reckless conduct are included in a new § 1:10. The latter instruction set involves a complex case in which two defendants were charged with multiple counts. The Commentary contains suggestions for substantially shortening and simplifying the instructions.

Three sections have been updated: § 3:11 covering theft of a motor vehicle, § 6:7 covering unlawful possession of a firearm, and § 6:10 covering intimidating a public servant. In all three sections, instructions from 2009 or 2010 have been replaced with instructions from 2023.

In other sections, the Commentary has been revised to reflect recent case law. Uncertainty over Washington's definition of "threat" was created by *Counterman v. Colorado*, 600 U.S. 66, 143 S. Ct. 2106, 216 L. Ed. 2d 775 (2023). The Washington Supreme Court resolved this uncertainty in *State v. Calloway*, 6 Wash.3d 257, 585 P.3d 1270 (2026). That case upholds the constitutional validity of the Washington harassment statute. Jury instructions defining "threat" must, however, be modified to reflect the requirements of *Counterman*. This development is discussed in §§ 1:9, 1:18, 3:8, 6:2, and 6:3.

Conflicting authority has arisen about the application of the "transferred intent" doctrine. The Washington Court of Appeals had held that the doctrine only applies to a victim that was harmed or put in apprehension of harm *State v. Frasquillo*, 161 Wash. App. 907, 255 P.3d 813 (Div. 2 2011). The same Division of the Court of Appeals has now held that the doctrine applies to victims who are merely present. *State v. Sanchez-Radilla*, 36 Wn. App. 2d 682, 587 P.3d 99 (Div. 2 2026). This development is discussed in §§ 1:12, 1:16, and 1:17.

This edition covers statutes and case law through May 31, 2026.

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