

Subject: RUPRO: Recommendation for Judicial Council action (CALCRIM)
Date: Tuesday, August 12, 2014 1:44:00 PM
Attachments: [20140822itemA.pdf](#)

Dear Members of the Rules and Projects Committee:

With Justice Hull's approval, we are sending proposed revisions to the California Criminal Jury Instructions (CALCRIM). We apologize for the short notice and ask that RUPRO act by e-mail, under rule 10.750(o)(1)(B). Please respond by email by **5 p.m., Thursday, August 15** indicating whether you recommend these revisions for approval on the Judicial Council's August 22, 2014, consent agenda. Revisions are shown in ~~strikeout~~ and underlining and you may want to review them on your device rather than printing the attachment. These revisions were circulated for comment May 12 – June 20, and received one comment only, on an issue already incorporated by the committee. The proposed revisions are minor and non-controversial in nature and include, among other changes:

Introductory and death penalty instructions (CALCRIM Nos. 101, 760)

In response to a comment from Judge Steve White, Superior Court of Sacramento County, the committee revised the introductory cautionary admonitions and the death penalty instruction to clarify how CALCRIM No. 101 must be modified when given during the penalty phase of a capital case.

Exercise of privilege by a witness (CALCRIM No. 320)

In response to a comment by Ventura County Chief Deputy Public Defender Michael McMahon, the committee modified CALCRIM No. 320 for use when a witness improperly invokes the privilege not to testify and refuses to answer a question.

Lewd or lascivious acts (CALCRIM Nos. 1110–1112)

In *People v. Shockley*, the Supreme Court found that battery is not a lesser included offense of lewd and lascivious conduct with a child under 14 years of age. In *People v. Hanna*, the Court of Appeal determined that the mistake-of-fact defense applies to an attempt to commit a lewd act on a child under 14 years of age. The committee revised the affected instructions accordingly.

Sale and offering to sell or transport controlled substances (CALCRIM Nos. 2300–2301)

A recent revision to Health & Safety Code section 11352(c) limits the definition of *transports* to *transport for sale*. The committee made the necessary changes to these instructions.